

Local Government, Housing and Planning Committee

4th Meeting, 2024 (Session 6), Tuesday 30 January 2024

Housing (Cladding Remediation) (Scotland) Bill

Second evidence session with stakeholders

Introduction

1. The purpose of this paper is to provide information for the Committee's second evidence session with stakeholders on the Housing (Cladding Remediation) (Scotland) Bill ("the Bill").

2. The Bill and its accompanying documents are available [online](#).

3. At this session on the Bill the Committee will firstly hear in a roundtable format from surveyors, fire safety experts and a representative of local authority building standards. Specifically, the Committee will hear from:

- Phil Diamond, Managing Director, Diamond & Co;
- Jocelyne Fleming, Policy and Public Affairs Officer, Chartered Institute of Building;
- Alan McAulay, Building Standards Hub Pilot Director, Local Authority Building Standards Scotland (LABSS);
- Jim McGonigal, President, Institution of Fire Engineers;
- Gary Strong, Head of Professional Practice, Royal Institution of Chartered Surveyors (RICS);
- Kate Swinburne, Associate Director, OFR consultants

4. Submissions to the call for views from participants can be accessed via the following link:

https://yourviews.parliament.scot/lghp/housing-cladding-remediation-bill/consultation/published_select_respondent? b_index=0

5. The Committee will then hear from the following panel representing the interests of lenders, insurers and the Law Society of Scotland:

- John Marr, Principal, Devolved Government & Social Housing, UK Finance;
- Calum McQueen, Technical Surveying Manager, e.surv Chartered Surveyors;
- Mervyn Skeet, Director of General Insurance Policy, Association of British Insurers;
- John Sinclair, Convener Property Law Committee, Law Society of Scotland

6. This is the Committee's third evidence session on the Bill. The Committee previously took evidence from the Bill Team at the Committee's meeting on 12 December 2023. The Official Report of the meeting can be accessed at the following link: [Official Report \(parliament.scot\)](#).

7. At its meeting on 23 January 2024 the Committee took evidence from affected owners and tenants as well as developers. A video of the meeting can be accessed at the following link: <https://www.scottishparliament.tv/meeting/local-government-housing-and-planning-committee-january-23-2024>

Background

8. 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.

9. 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.

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

11. 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.

12. 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:

13. **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:

- 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.

14. **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.

15. **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.

16. 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).

17. 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.

18. **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.

19. **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.

20. 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."

21. Scottish Government figures, updated in September 2023, show that 105 buildings are currently part of the Single Building Assessment programme. A further update was provided to the Committee by the Bill team at the Committee's meeting on 12 December:

"We have formally commissioned 27 building assessments. We now have 16 of those at substantive reporting stage. We have remediation under way in one building and mitigation in a second building. We have a commitment to ensure that all of those 105 are on a pathway to a single building assessment by next summer. That is set out in the mandate letter from the First Minister to the cabinet secretary, and we are taking steps to ensure that the mandate is met.

22. **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."

23. 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."

24. 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."

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

The Bill

25. The Bill is split into five parts, these are:

1. The Cladding Assurance Register.
2. Powers to assess and address danger.
3. Offences under parts 1 and 2.
4. Responsible developers scheme.
5. Interpretation and final provisions.

26. The following section provides a short overview of the provisions set out in each part of the Bill. A detailed description can be found in the [explanatory notes](#), produced by the Scottish Government, which accompany the Bill.

27. **Cladding Assurance Register:** Scottish Ministers will be required 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. It will be an offence to give false or misleading information to a person conducting a Single Building Assessment or Scottish Ministers, where this information would result in an inaccurate entry in the Register, or an entry not being created where it otherwise would.

28. **Powers to assess and address danger:** Scottish Ministers will have the power to arrange for a Single Building Assessment to be carried out, subject to owners and occupiers receiving seven days' notice. An Assessment cannot be carried out during that notice period without the consent of the property owners.

29. Scottish Ministers will have the power to require any person to provide them with information that is reasonably required for the purposes of conducting a Single Building Assessment or for entry into the Cladding Assurance Register. It will be an offence, without reasonable excuse, not to supply such information when required.

30. Scottish Ministers will be able to arrange for remedial work identified by a Single Building Assessment to be carried out. Such work cannot begin before the expiry of a 21-day notice period, where owners and occupiers are notified of proposed works.

31. The only exception to this is where urgent work, required for the protection of human life, is required. In which case, Ministers should give such notice as circumstances permit. Property owners will be able to appeal to a Sheriff against proposed non-urgent remedial work. Any appeal must be submitted within 21 days of receiving notification. The Sheriff may allow the work to proceed, allow some of the work to proceed, or prevent the work from proceeding. A Sheriff has 21 days in which to decide an appeal. If a decision is not made within that time, then the work may proceed.

32. Scottish Ministers will have the power to require the residents of premises clad in potentially flammable material to evacuate the premises in two circumstances:

1. A Single Building Assessment identifies a substantial risk to the occupant's lives related to the cladding system. The requirement to evacuate can be given in writing or verbally. Occupants can be asked to evacuate immediately.

2. Occupants may be endangered by remedial works identified as necessary by a Single Building Assessment. Notice to evacuate must be given in writing, allowing at least 14 days before residents are required to leave.

33. It will be an offence to occupy a property which should have been evacuated. Scottish Ministers will be able to apply to a Sheriff for a warrant to eject occupants who refuse to leave a property when required.

34. A person conducting a Single Building Assessment or undertaking remedial work is entitled to do anything reasonably required to carry out that work, subject to requirements that include giving at least 24-hours' notice of their plans, carrying out works at a reasonable time of day and ensuring premises are secured when they leave. Forced entry is only permissible once Scottish Ministers have obtained a warrant and only in certain specific circumstances, including where entry has been refused, or is expected to be refused, the premises are unoccupied, the owner is temporarily absent, or the work is urgent.

35. It will be an offence for a property owner, occupier, or other person on the premises to obstruct or fail to assist, when requested, a person undertaking a Single Building Assessment or remedial work.

36. Scottish Ministers will have powers to require the owners, occupiers and those who receive rental income from a property to supply information necessary to allow them to issue notices relating to Single Building Assessments and remedial work. Failure to supply such information will be an offence.

37. **Offences under Parts 1 and 2:** Senior office holders in a company, partnership or other body found to have committed an offence under Parts 1 and 2 of the Bill can also be held personally culpable, where the commission of that offence involves their consent, connivance, or neglect. As is usual, nothing in the Bill makes the Crown criminally liable.

38. **Responsible Developers Scheme:** Scottish Minister will have the power to establish one, or more, Responsible Developers Schemes, the purpose of which is to:

"...secure that persons in the building industry address, or contribute towards the costs of addressing, risks to human life created or exacerbated (directly or indirectly) by the external wall cladding systems of buildings that are wholly or partly residential."

39. Details about scheme membership, who should operate the scheme(s), membership charges and processes will be established in separate Regulations, which will be the subject of the affirmative parliamentary procedure. Sections 21 to 24 of the Bill "elaborate" on the provisions that will be set out in these Regulations. This "elaboration" includes the following points:

- Membership of a Scheme will be open to any developer that has a connection to a building that has problematic cladding, which is defined as being an external wall cladding system identified by a Single Building Assessment as creating or exacerbating a risk to human life and that work is required to eliminate or mitigate that risk.

- Membership of a Scheme may include conditions requiring the carrying out of Single Building Assessments, contributing to the cost of remediation work, and providing information to Scottish Ministers and others.
- There will be a right of appeal against decisions taken by the operator of a Scheme regarding joining, leaving or expulsion from that Scheme.

40. Regulations will allow Scheme operators to add a developer that meets the criteria for Scheme membership but choose not to join to a "prohibited developers list". A right of appeal would be created for those aggrieved at being added to such a list. Inclusion in a list could result in:

- A developer being prohibited from carrying out any development.
- A developer being prohibited from carrying out development of a kind specified in Regulations.
- A local authority building standards department being prevented from awarding or amending any application for building warrant submitted by a developer on the list.
- Any submission of a completion certificate to a local authority building standards department from a developer on the list being rejected.

41. New offences would be created for breaching a prohibition on undertaking development, the maximum penalties being £50,000 on summary conviction and an unlimited fine following conviction in indictment.

42. **Interpretation and final provisions:** The key element of this Part is the definition of a Single Building Assessment. This is defined as an assessment of a flatted building that stands at least 11 meters above ground level and has an external wall cladding system. The building must contain at least one dwelling and have been built between 1 June 1992 and 1 June 2022. The assessment must consider any risk to human life created or exacerbated by the cladding system and identify what work (if any) is needed to eliminate or mitigate that risk. The assessment must be conducted by a person authorised to do so by Scottish Ministers and in accordance with standards specified by Scottish Ministers.

43. This definition can be amended through Regulations by Scottish Ministers, subject to the affirmative procedure, but not to include non-domestic buildings or buildings that do not have an external wall cladding system.

44. The provisions of the Bill will come into force on a day(s) that Scottish Ministers specify in Regulations.

Next steps

45. Next week (6 February 2024) the Committee will conclude its evidence taking on the Bill when it will hear from the Minister for Housing.

**Clerks to the Committee and Alan Rehfisch, Senior Researcher, SPICe
January 2024**