

Housing (Cladding Remediation) (Scotland) Bill

Partial Business and Regulatory Impact Assessment

Purpose and Intended Effect of the introduction of the Cladding Remediation (Scotland) Bill 2023

1. The purpose of the Housing (Cladding Remediation) (Scotland) Bill ('the Bill') is to facilitate the delivery of the Cladding Remediation Programme¹.
2. The Programme aims to safeguard residents and owners by addressing the risk to human life that is (directly or indirectly) created or exacerbated by a building's external wall cladding system, as well as the consequential negative impacts which can currently exist in relation to the buying, selling, and re-mortgaging of relevant flatted residential properties in Scotland. The Programme scope is limited to multi-residential domestic buildings which may include a commercial premises, constructed or refurbished between 1 June 1992 and 1 June 2022, 11 metres or over in height and incorporating a form of external wall cladding system.

Objectives

3. The Bill will enable delivery of the Programme by:
 - a) Requiring Ministers to establish a Cladding Assurance Register containing information on buildings which have been through a Single Building Assessment and any required remediation.
 - b) Creating powers for Ministers to enable them to arrange for Single Building Assessments to be undertaken to assess risks in buildings within scope of the Programme. The Bill defines the meaning of a Single Building Assessment and allows Ministers to specify the standards against which such an assessment should be undertaken.
 - c) Creating powers for Ministers to arrange for remediation work, which is identified through that Single Building Assessment, to be undertaken. This will include in urgent cases where the risk is immediate as well as a power to require occupants to evacuate buildings.
 - d) Creating powers for Ministers to require information from a person to allow them to carry out a Single Building Assessment or maintain the Cladding Assurance Register.
 - e) Establishing a Responsible Developers Scheme to support collaborative engagement with developers and ensure that they address, or contribute towards addressing, the costs of remediating the buildings they have developed which are within scope of the Programme.

The powers of remediation and the power to carry out a Single Building Assessment in the Bill can be utilised without the consent of owners where appropriate notice has

¹ [Cladding - Building standards - gov.scot \(www.gov.scot\)](https://www.gov.scot)

been given, or if the work is urgent, where notice has been given as permitted by the circumstances.

Background

4. The Grenfell Tower fire in London in June 2017 highlighted concerns about the safety of medium and high-rise buildings with external wall cladding across the UK. The Scottish Government has taken a range of actions following the tragic events at Grenfell, including changes to Scottish Fire Safety Standards in 2019 and then again in 2021. Changes to the requirements on the fire safety of cladding systems were introduced in June 2022, including banning highly combustible metal composite material panels on all buildings and a ban on combustible external wall cladding systems of residential and high-risk buildings 11 metres or over.
5. Cladding refers to an external covering used on buildings. A cladding system is the whole system including external materials like cladding boards and render, the insulation, fixings, cavity barriers and fire stopping at openings and spandrel² panels that form part of the external wall of the building. This generally does not include the structural wall or frame, including steel frame, concrete frame, timber frame or structural masonry. Buildings can have a range of cladding materials over the surface such as:
 - combustible metal composite cladding;
 - Metal composite material (MCM);
 - Metal composite material with a polyethylene core (MCM-PE - also known as category 3 cladding for fire safety purposes);
 - Aluminium composite material with a polyethylene core (ACM-PE). Grenfell Tower building was ACM-PE.
6. In Spring 2020 Scottish Ministers established the Ministerial Working Group on Mortgage Lending and Cladding (the “Working Group”) specifically to address the difficulties faced by owners and residents of properties in buildings with external wall cladding. Owners and residents were reporting challenges in re-mortgaging, buying, selling, and insuring properties with external wall cladding systems. The Working Group published its final report and recommendations in March 2021. Ministers accepted the recommendation from the Working Group that the Scottish Government should offer and fund a Single Building Assessment on a whole building basis rather than individual flats. The Single Building Assessment was designed to be an assessment of both the internal fire risk and the risk of fire relating to external cladding or wall systems.
7. In August 2021, the Scottish Government established the Programme to take forward the recommendations of the Working Group. This includes the Single

² <https://www.designingbuildings.co.uk/wiki/Spandrel>

Building Assessment Pilot Program, securing the Scottish Safer Buildings Accord and carrying out the Stock Census.

8. As work in assessing and remediating buildings has progressed, issues have been identified which are impacting on the delivery of the overall Programme. The aim of the Bill is to address these, thereby facilitating the delivery of the Cladding Remediation Programme.

Consultation

9. This Bill is being introduced at pace and without the full standard consultation process due to the need to ensure the continued momentum of progress in addressing critical fire safety issues that may represent a risk to life. The Programme has engaged in all of the areas that featured in the Working Group and its recommendations. Engagement with stakeholders from the Working Group has continued through the Cladding Remediation Stakeholder Group and there has been specific targeted engagement on the subjects that the Bill addresses. This engagement continues in order to guide the Programme in a manner best aligned to its strategic purpose.
10. The Ministerial Working Group on Mortgage Lending and Cladding brought together representatives from key organisations including:
 - Association of British Insurers
 - Homes for Scotland
 - Law Society of Scotland
 - Property Managers Association Scotland
 - Royal Institution of Chartered Surveyors
 - UK Finance
 - Scottish Fire and Rescue Service
 - Scottish Government
11. The Cladding Remediation Stakeholder Group has been the principal stakeholder engagement forum for the Programme. Specific engagement sessions were held with members of the group, collectively and individually, while the policy for the Bill was developed to inform its contents. Its membership includes:
 - Scottish Government
 - Association of British Insurers
 - Building Societies Association
 - High Rise Scotland Action Group
 - Homes for Scotland
 - Institution of Fire Engineers
 - Law Society of Scotland
 - Local Authority Building Standards Scotland
 - Property Managers Association

- Royal Institution of Chartered Surveyors
- Scottish Fire and Rescue Service
- Scottish Futures Trust
- UK Finance
- Scotland's Regeneration Forum
- Chartered Institute of Business

12. Certain Scottish Government teams such as Building Standards Division and Planning, Architecture and Regeneration Division have been closely involved in the development of the Bill and have had the opportunity to input throughout its development.

13. Initial discussions have also taken place with other teams across Scottish Government including:

- Directorate for Local Government and Housing: Building Standards Division
- Directorate for Local Government and Housing: Better Homes Division
- Directorate for Local Government and Housing: Planning, Architecture & Regeneration Division
- Directorate for Energy and Climate Change
- Directorate for Economic Development: Industrial Transformation and Office of CSA.

14. The Scottish Government also has regular discussions with the Department for Levelling Up, Housing and Communities to understand and where appropriate learn from the cladding remediation work it is undertaking in England. There has also been engagement with the Welsh Government about cladding remediation activity in Wales.

Public Consultation

15. Whilst there has been no formal consultation process to date due to the expedited nature of the Bill, we are committed to working collaboratively with partners. The BRIA will be updated to reflect this engagement in due course.

Options

16. Option 1 – Introduce legislation to enable the Cladding Remediation Programme

17. Option 2 – Do Nothing

Sectors and Groups Affected

18. The sectors and groups affected by the Bill, and therefore the Programme, include:

- Homeowners

- Residents
- Commercial premises owners (where the premises are located within a building within the scope of the Programme)
- Insurers
- Mortgage Lenders
- Developers

Option 1

19. Homeowners and residents, as well as commercial premises owners, in buildings within the scope of the Programme may be exposed to a risk to human life that is (directly or indirectly) created or exacerbated by the building's external wall cladding system, as well as the consequential negative impacts which can currently exist in relation to the buying, selling, and re-mortgaging of relevant flatted residential properties in Scotland.
20. Insurers and Mortgage Lenders can be reluctant to insure or lend on buildings which may be subject to increased fire risk from problematic cladding.
21. Developers may be concerned about risk to those residing in their properties and reputational damage if they are unable to remediate their buildings.

Option 2

22. Experience gained from the Programme has shown that a number of issues that will be addressed by the Bill have delayed work to remediate buildings.
23. Circumstances where universal consent to works in a building proved difficult to obtain caused delays to remediation work. Such delays can mean that residents are living for longer in buildings with potentially unsafe cladding. The powers in the Bill on consent will help address these delays.
24. Without the Cladding Assurance Register which is being introduced by the Bill, and the process behind it of a Single Building Assessment and any required remediation works, property owners may continue to find it challenging to re-mortgage, insure or sell their homes. Insurers and mortgage lenders would likewise lack assurance about the safety status of a building.

Costs

Option 1

25. The costs of remediating a building are unknown until the Single Building Assessment is undertaken.
26. The Programme was initially established on a pilot basis with the intention of moving into a wider delivery approach following the completion of the pilot. Currently, the pilot phase of the Programme includes 105 buildings. A Stock

Survey is being undertaken to better define the number of buildings within scope and therefore the resourcing implications of the Programme as a whole.

Cladding Remediation Programme Costs

27. The Programme publishes spend data on a quarterly basis. The latest set of data [Single Building Assessment programme: spending information - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/single-building-assessment-programme/permissions/spending-information/pages/permissions-spending-information.aspx) shows that the Programme has spent just over £3.6 million to the end of June 2023. These costs apply to the ongoing Programme and do not arise from the Bill.

28. The spend data published online covers 3 financial years 2021 – 2022; 2022 – 2023 and the current financial year 2023 – 2024 and is shown on a regional basis as set out in the table below.

Local Authority	FY 21-22	FY 22-23	FY 23-24 (To end of Q1 FY 23-24)	Cumulative (To end of Q1 FY 23-24)
Aberdeen	£17,700.00	£267,420.56	£295,898.40	£581,018.96
Edinburgh	£109,298.00	£172,259.40	£34,312.80	£315,870.20
Dundee	£0	£87,653.00	£0	£87,653.00
Glasgow	£114,282.00	£1,057,997.55	£1,503,790.82	£2,676,070.37
Total	£241,280.00	£1,585,330.51	£1,834,002.02	£3,660,612.53

29. When the Cladding Remediation Programme was first established it adopted a grant funding model. While the Programme has moved from a grant model to direct procurement payments are still being made under the grant model. The table below shows payments made through the grant funding model. These payments are part of the £3.6m cumulative spend set out in the table above but are also broken down to show the different types of grant – to pay for the risk assessment of a building; remediation work; assurance of work that has been undertaken or for work to address or mitigate an urgent/immediate risk which might include funding for a Waking Watch.³

³ A Waking Watch is a system whereby suitably trained individuals continually patrol all floors and the exterior of a building in order to detect a fire, raise the alarm and carry out the role of evacuation management.

Regulatory and EU Alignment Impacts

30. The regulatory context within which Scottish Government policy is developed changed on 31 December 2020 when the UK left the EU single market. This section requires you to consider what, if any, impacts the proposed measure will have on the following regulatory features related to leaving the EU: intra-UK trade, international trade and the Scottish Government's EU alignment policy.

Intra-UK Trade

31. The proposals in the Bill are not likely to impact on intra-UK trade.

International Trade

32. There is no impact on international trade and investment in terms of this Bill.

EU Alignment

33. There is no impact on EU alignment in terms of this Bill.

Scottish Firms Impact Test

34. Due to this being an expedited Bill, there has not been one to one engagement with small and micro businesses. However, it is recognised that while larger developers will be expected to meet the costs of remediating buildings which they have developed, there may be some smaller developers where this may not be viable. The intention is that at the point of creating regulations, proportionate requirements for developers will be considered.

Competition Assessment

35. The Bill supports the Programme by establishing a Responsible Developers Scheme to support collaborative engagement with developers and ensure that they address, or contribute towards addressing, the costs of remediating the buildings they have developed.

36. The Bill includes regulation making powers which will allow identified developers who do not join the Scheme or who breach the membership conditions to be subject to a prohibition on accessing required building standards documentation, building warrants or have their completion certificates accepted by verifiers. This would ensure that developers who do make commitments to remediate are not disadvantaged.

37. This is an expedited Bill. There are no new forms anticipated as a direct consequence of the Bill itself. Any new forms will be considered in due course as part of the operational Programme.

Digital Impact Test

38. Not applicable. The changes being introduced will not be affected by possible changes in digital technology.

Legal Aid Impact Test

39. Given the rights of appeal contained within the Bill, further consideration will be required regarding Legal Aid and the BRIA will be updated to reflect this in due course.

Enforcement, Sanctions and Monitoring

40. The Programme which the Bill seeks to enable is already operational with established governance and reporting mechanisms. Enforcement, Sanctions and Monitoring will be managed the Programme after commencement of the Bill.

Implementation and Delivery Plan

41. Whilst the timeline will be informed by Parliamentary process, it should be noted that the Programme is already operational and supported by a Programme Management Office.

Post-implementation Review

42. We will review within 10 years of commencement of the Bill, if not sooner. It is worth noting that with the exception of the Cladding Assurance Register most of the provisions in the Bill are likely to be time limited linked to the life time of the Programme.

Summary and Recommendation

43. Option 1, Introduce legislation to enable delivery of the Cladding Remediation Programme, is recommended on the basis that the fire safety risk which may exist in buildings within scope of the Programme cannot be tolerated.

Summary costs and benefits table

44. This level of detail is not available at this time. A Stock Census is being undertaken to better define the number of buildings within scope and therefore the resourcing implications of the Programme as a whole.

Declaration and Publication

45. I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.



Signed:

Date: 27 October 2023

Minister's name: Paul McLennan MSP

Minister's title: Minister for Housing

Scottish Government Contact point: Amy Stuart, Head of Cladding Remediation Policy and Legislation



© Crown copyright 2023

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-83521-583-8 (web only)

Published by The Scottish Government, November 2023

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1379734 (11/23)

W W W . g o v . s c o t