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# Housing (Cladding Remediation) (Scotland) Bill

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The Housing (Cladding Remediation) (Scotland) Bill provides a statutory basis for the Scottish Government to take action, alongside house builders, to tackle potentially unsafe cladding systems on buildings that are 11 metres tall or higher.

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SB 24-08

# Contents

<b>Summary</b>	<b>3</b>
<b>Introduction</b>	<b>4</b>
<b>Background</b>	<b>5</b>
<b>Consultation on the proposals in the Bill</b>	<b>8</b>
<b>Proposals in the Bill</b>	<b>9</b>
<b>Financial implications of the Bill</b>	<b>12</b>
<b>Cladding remediation in England and Wales</b>	<b>14</b>
<b>Bibliography</b>	<b>16</b>

# Summary

The Housing (Cladding Remediation) (Scotland) Bill would give Scottish Ministers the additional statutory powers they consider necessary to progress their Cladding Remediation Programme. This programme involves the assessment of buildings with potentially flammable external wall cladding systems and, where such cladding is found, their remediation.

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 and over in height and incorporating a form of external wall cladding system.

The Bill would:

- Require Scottish Ministers to establish a Cladding Assurance Register. Every building subject to a Single Building Assessment would have an entry in the Register, which will set out the results of that assessment and any remedial work carried out.
- Allow Ministers to arrange Single Building Assessments to be undertaken to assess fire safety risks in buildings within scope of the Programme.
- Allow Ministers to arrange for remediation work, identified through a 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.
- Grant Ministers powers to require information from a person to allow them to carry out a Single Building Assessment or maintain the Cladding Assurance Register.
- Establish one, or more, Responsible Developers Schemes, to ensure that house builders address, or contribute towards the costs of addressing, risks to human life created or exacerbated by the external wall cladding systems of buildings within the scope of the Programme. Eligible developers who choose not to join such a scheme could be subject to sanctions, including prohibitions on undertaking development or receiving building standards approval.

# Introduction

The [Housing \(Cladding Remediation\) \(Scotland\) Bill](#) ("the Bill") was introduced to the Scottish Parliament by Shirley-Anne Somerville MSP, Cabinet Secretary for Social Justice on 1 November 2023. The Bill would give 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 surveys carried out under the Single Building Assessment programme and associated remedial works.

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.

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 metres plus are known as "high rise" buildings.

# Background

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.

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.

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

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 .

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:

**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.

**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](#)<sup>1</sup>. 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.

**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](#)<sup>2</sup> 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.

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).

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.

**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.

**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.

Scottish Government officials [told the Local Government. Housing and Planning Committee](#) on 12 December 2023 that:

“ 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.”

[Scottish Government figures](#), updated in September 2023, show that 105 buildings are currently part of the Single Building Assessment programme.

**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.”

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.”

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.

# Consultation on the proposals in the Bill

The Scottish Government has not conducted any public consultation on the proposals in the Bill. The [Policy Memorandum](#) which accompanies the Bill highlights engagement between the Scottish Government and stakeholders through the Ministerial Working Group on Mortgage Lending and Cladding, which operated in 2020-21, and the current [Cladding Remediation Stakeholder Group](#). The Policy Memorandum states:

“ 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”

Details of these engagement exercises, and how they influenced the development of proposals in the Bill, are not publicly available.



# Proposals in the Bill

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

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.

**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.

**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.

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.

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. 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.

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.

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.

A person conducting a Single Building Assessment or undertaking remedial work is entitled to do anything reasonably required to carry out that work, including entering the premises. However, before entering premises, there must be 24 hours notice to occupiers, and entry must only be 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.

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, where a warrant is in place.

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.

**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.

**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.”

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.

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.

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.

**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 metres 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.

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.

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

# Financial implications of the Bill

The [Financial Memorandum](#) which accompanies the Bill provides limited data on its possible budgetary implications for the Scottish Government, house builders and others. This is largely due to there being only partial information available on the number, and condition, of high and mid rise residential buildings in Scotland that may fall within the scope of the Bill. The Scottish Government is commissioning a census of such buildings across Scotland, the preliminary results of which "may" be available in early 2024.

The [High Rise Inventory 2021](#) states that there are 780 high rise residential buildings in Scotland. The Financial Memorandum estimates that there may be 5,000 mid rise buildings that fall within the scope of the Bill. It also states:

“ Work undertaken by an external consultancy for the Programme estimated that around 49% of high-rise buildings above 18m would require some level of remediation and 10% of high-rise buildings between 11 to 18 metres...Applying these assessments to the data assumptions set out above this would suggest around 382 buildings above 18 metres requiring some level of remediation and around 500 buildings between 11 and 18 metres requiring remediation.”

The Financial Memorandum states that:

“ Scottish Ministers have publicly committed to spend all the consequential funding provided by the UK Government for cladding remediation, currently estimated at £400 million.”

Key points from the Financial Memorandum are set out below.

**Cladding remediation programme:** The Financial Memorandum does not include an estimate of the likely eventual cost of the Scottish cladding remediation programme. However, it does highlight figures from the 2022 UK Government report [Estimating the prevalence and costs of external wall system life-safety fire risk in mid-rise residential buildings in England](#) <sup>3</sup>, which indicates:

“

- The mean cost per building of external wall system remediation is estimated to be between £640,000 and £790,000.”
- The mean cost per building of partial external wall system remediation is estimated to be between £380,000 and £470,000.”
- The mean cost per building of mitigation measures is estimated to be around £120,000.”

The cost of remediating potentially flammable cladding on any particular building may be significantly higher, or lower, than the "mean cost", depending on factors such as building height, number of flats, location, construction type, and materials used.

The Financial Memorandum goes on to state that

“ The cost of remediating buildings over 18 metres is likely to be higher given the evidence that taller buildings are more expensive.”

A [UK Government statistical update](#) published in December 2023 states that 1,345 English buildings that are 11 metres plus in height are due to undergo cladding remediation by developers at an estimated cost of around £2.7 billion - that is a mean cost per building of just over £2 million.

**Cladding assurance register:** The only costs associated with establishing and running the register are for two Scottish Government staff, one C1 post and one B3 post, which cost £80,257 and £61,816 respectively, based on 2022-23 figures (these are total costs to the Scottish Government - not salary figures).

**Single Building Assessment:** While Single Building Assessments are not a creation of the Bill, they are an integral part of the cladding remediation process. To date, the Financial Memorandum reports that Single Building Assessments have cost between £20,000 and £170,000. This wide range is largely due to differences in the size and complexity of the buildings being assessed and the amount of work required to complete an assessment. Single Building Assessments will be paid for by the Scottish Government, unless a developer chooses to fund an assessment itself.

**Powers to address danger:** Again, the only costs identified were for four Scottish Government staff responsible for engaging with homeowners and residents prior to and during a Single Building Assessment and cladding remediation works. These staff would be employed at the following grades and cost to the taxpayer - C1 (£80,257), B3 (61,816) and two A4 posts (£34,720 per post).

**Responsible developers scheme:** The responsible developers scheme will have minimal cost implications for the Scottish Government, other than some general administrative costs.

However, there will also be a number of "orphan" buildings, where the original developer has ceased trading or refuses to participate in the responsible developers scheme. In these cases, it is anticipated that the Scottish Government will foot the bill for remediation work.

Local authorities may incur some additional costs in dealing with an uptick in building control work as significant remediation work begins. The bulk of the responsible developers scheme costs will fall on developers, who will foot the bill for remediation work (see indicative average remediation costs as set out above). The eventual cost of the scheme to developers is unclear, as the number of buildings requiring remediation and the extent of work required to those buildings is currently unknown.

# Cladding remediation in England and Wales

The following sections very briefly highlight ongoing cladding remediation action being pursued by the UK Government in England and the Welsh Government in Wales.

**England:** The UK Government is pursuing a significant programme of cladding remediation in England, now largely managed under the provisions of the [Building Safety Act 2022](#).

The UK Government has allocated £5.1 billion to address fire risks associated with cladding systems on residential buildings, including £4.5 billion through the [Building Safety Fund](#) which originally only applied to buildings over 18 metres tall. This Fund has now largely been superseded by the [Cladding Safety Scheme](#), which provides for the remediation of unsafe cladding on buildings 11metres tall and over (outside of London, the original scheme still applies for properties over 18 metres in the capital), it also provides funding for buildings where the original developer cannot be traced.

Under these schemes, a qualifying leaseholder should be completely protected from all costs related to the remediation of unsafe cladding systems. Non-qualifying leaseholders will be fully protected where their building owner is - or is related to - the developer that was responsible for the defects.

The UK Government has asked developers to sign up to a [Developer remediation contract](#) which requires them to:

- Take responsibility for all necessary work to address life-critical fire-safety defects arising from the design and construction of buildings 11 metres and over in height that they developed or refurbished in England over the 30 years ending on 4 April 2022.
- Keep residents in those buildings informed about progress towards meeting this commitment.
- Reimburse taxpayers for funding spent on remediating their buildings.

As of 7 December 2023, 54 developers have signed the contract.

Similar to the proposed Scottish Responsible Developers Scheme, the Building Safety Act 2022 established a [Responsible Actors Scheme](#). Membership of the scheme requires developers to identify and remediate (or pay for the remediation) of life-critical fire safety defects in residential buildings over 11metres in height, which they developed or refurbished in England between 1992 and 2022. If an eligible developer fails to join the scheme they can be prevented from obtaining planning permission for major developments or from obtaining building control approvals.

The Building Safety Act 2022 also established a Building Safety Levy, effectively a tax on the developers of residential buildings of any height in England. It will be imposed on applications for building control approval (and certain other applications/notices). The [UK Government expects](#) the levy is to raise up to £3 billion over a decade to fund building safety remediation, such as replacing defective cladding and fixing other historical building safety defects. Affordable homes and certain other public and community buildings will be

exempt from the levy.

**Wales:** Julie James MS, Minister for Climate Change in the Welsh Government [made a statement on building safety](#) to the Senedd on 28 November 2023, outlining action taken by the Welsh Government to tackle the issue of fire safety in high rise residential buildings. The key elements of this work included:

- From April 2024, responsibility for building standards verification of buildings 11 metres and over in height must be carried out by the relevant local authority building standards department and not a private sector verifier. (Such a requirement is not needed in Scotland as building standards verification is already the sole responsibility of local authorities).
- From April 2024 all building standards inspectors and approvers must join a national register. Entry into the register requires such professionals to comply with all new standards, codes and rules. In addition, building inspectors must have their competence verified by an independent third party.
- A commitment to address fire safety issues in buildings 11 metres and over in height, regardless of whether they have an external cladding system, and at no cost to leaseholders.
- 10 major UK developers have signed a contract with the Welsh Government to remediate buildings which they constructed, with negotiations ongoing with two others.
- Agreed approach to working with smaller developers and working on a scheme to deal with 'orphan buildings' where the developer no longer exists.
- £39 million has been allocated for remediation works on 131 social housing buildings.

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