



UK: Important announcement on the cladding crisis

By Warren Gordon, Eleanor Murray, Lukas Rootman and Mark Heighton

Summary

The Government has given residential property developers a deadline of early March 2022 to agree a fully funded plan of action to fix the cladding crisis in England. Failure to do so may lead to the Government imposing a solution in law. The Government has also announced a reset of its approach to protect tenants from the impact of the cladding crisis.

Context – Building Safety Bill

We have [previously reported](#) on the Building Safety Bill (“the Bill”) which continues to make its way through Parliament and which sets out a pathway for the future of how residential buildings should be constructed and maintained. The Bill contains a series of reforms to building safety and is the most substantial legislative response to the Grenfell Tower fire in 2017. The Bill has a new regime for the management of building safety risks in an occupied “higher-risk” building in England, which is a building at least 18 metres high, or with at least 7 storeys, and with at least 2 residential units.

One of the biggest controversies of the Bill relates to how the steps to manage safety risks for such a building will be funded and the extent to which

tenants may be made to pay for historical remedial works.

The Bill currently proposes that, for a lease of at least 7 years of premises in such a building under which the tenant pays a variable service charge, terms will be implied requiring the tenant to pay a so-called “building safety charge” and the landlord to comply with its building safety duties.

The Government has clarified previously that the building safety charge will only cover the ongoing costs of the new building safety regime, and not the cost of remedial works. The building safety charge is intended to be payable in respect of costs incurred (or to be incurred) in connection with measures that the designated accountable person will be entitled to take under the new regime to assess and manage the building safety risk of the relevant building.

The position in relation to the recovery of costs for the remediation of existing defective cladding systems/completing works to rectify historical defects which make a building unsafe, has been regarded as unclear.

Also, importantly, there are no equivalent provisions in the Bill for residential buildings that are less than 18 metres high.



On 10 January 2022 the Government announced a reset of its approach to building safety with a new plan to protect tenants and make certain developers and companies pay to fix the cladding crisis. The Government published a letter to residential developers setting out its expectations on achieving a fully funded plan of action.

Government's letter to developers

The Government is concerned to address 11-18 metre residential buildings with unsafe cladding and does not want the cost of this to sit with the tenants of such buildings. The Government has made some financial provision for this cost through its aluminium composite material (ACM) cladding system remediation programme and through the Building Safety Fund (which covers the capital costs of removing and replacing unsafe non-ACM cladding systems, but not for buildings less than 18 metres high). This leaves a funding gap for 11-18 metre residential buildings and, while some developers have funded remedial works, others have not. The Government's letter of 10 January 2022 focuses on 11-18 metre buildings, but also relates to buildings 18 metres or higher.

In the letter, Rt Hon Michael Gove MP, the Secretary of State at the Department for Levelling Up, Housing and Communities, offers a window of opportunity, between now and March 2022, for the industry as a whole to work with his department to agree a settlement that will "ensure the industry that caused the cladding problem pays to fix it".

The Government expects clear commitments from developers to:

1. Agree to make financial contributions this year and in subsequent years to a dedicated fund to cover the full outstanding cost to remediate unsafe cladding on 11-18 metre residential buildings (estimated currently at £4 billion);
2. Fund and undertake all necessary remediation of residential buildings over 11 metres that the developers have played a role in developing (this includes both 11-18 metres and 18 metres+); and
3. Provide comprehensive information on all residential buildings over 11 metres, which have historic fire-safety defects and which developers have played a part in constructing in the last 30 years.

It is proposed that the Government will host a roundtable bringing together 20 of the largest

housebuilders and developer trade bodies, followed by ongoing negotiations, and discussions will at appropriate junctures include tenants and those affected by the Grenfell Tower tragedy.

The Secretary of State's expectation is that developers publicly commit to this framework by early March 2022, so that there is a clear, fully-funded plan of action that can be made available to the public and affected tenants. The Secretary of State is prepared to take all steps necessary to make this happen, including restricting access to Government funding and future procurements, the use of planning powers, the pursuit of companies through the courts and the imposition of a solution in law if necessary.

The Government will announce a decision on which companies are in scope to make funding contributions, but it is expected to cover all firms with annual profits from housebuilding at or above £10 million.

Headlines for Government's other announcements on 10 January 2022

- Following the Secretary of State's letter to developers, the old proposed loan scheme for tenants in medium-rise flats will be scrapped.
- There is a 4-point plan to reset the Government's approach on building safety:
 - Opening up the next phase of the Building Safety Fund to remove cladding from the highest risk buildings.
 - Establishing a new team to pursue companies at fault, making them fix the buildings they built and face commercial consequences if they refuse.
 - "Restoring common sense" to building assessments and the market. This includes an assumption that there is no risk to life in medium and low-rise buildings unless there is clear evidence of the contrary; and withdrawing the Government's Consolidated Advice Note, which was wrongly interpreted by the industry as requiring remediation of all cladding irrespective of building height. The Government will also support updated British Standard Institution guidance, to avoid wholesale cladding replacement where safe to do so. Lenders are encouraged to continue to minimise the use of EWS1 forms for medium and lower rise buildings and, if such forms are deemed necessary, the Government will



- indemnify building assessors to give them greater confidence to exercise professional judgement when providing the form.
- New protections for tenants living in their own flats: with no bills for fixing unsafe cladding and new statutory protections for tenants within the Building Safety Bill.
- The Government intends to introduce amendments to the Building Safety Bill to retrospectively extend the legal right of building owners and tenants to demand compensation from their building's developer for safety defects up to 30 years old. The Bill currently covers defects up to 15 years old.
- There will be an additional £27 million for the installation of fire alarms in all high-risk buildings so as to end the waking watch measures, which are usually paid for by tenants.
- The Government will seek to ensure tenants are protected from forfeiture and eviction due to historic fire safety costs.



Other taxes already announced

The Building Safety Bill contains provisions to be included in the Building Act 1984 for a levy on applications for building control approval in respect of higher-risk buildings.

Residential Property Developer Tax: Certain residential property developers will be liable to the Residential Property Developer Tax (as a contribution to the costs associated with the removal of unsafe cladding) and our Law-Now's [here](#) and [here](#) provide further details including the exemption for build-to-rent investors, non-profit housing companies and student accommodation.

Conclusion

The Government has announced a significant series of policy measures to protect tenants from the impact of the cladding crisis and to seek to ensure that developers pay. Some of the announcements are lacking in detail and we will keep you updated. *This article was written by CMS partners/employees Warren Gordon, Eleanor Murray, Lukas Rootman and Mark Heighton, and was first published on CMS Law-Now on 12 January 2022 available here https://www.cms-lawnow.com/ealerts/2022/01/important-announcement-on-the-cladding-crisis?cc_lang=en.*

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