



Law Society  
of Scotland

# Stage 3 Briefing

Housing (Cladding  
Remediation)  
(Scotland) Bill

May 2024



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## Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Housing (Cladding Remediation) (Scotland) Bill<sup>1</sup> (the **Bill**) was introduced by the Cabinet Secretary for Social Justice on 1 November 2023.

We previously submitted written evidence,<sup>2</sup> and then provided oral evidence in January 2024,<sup>3</sup> to the Local Government, Housing and Planning Committee of the Scottish Parliament as part of its Stage 1 consideration of the Bill. The Local Government, Housing and Planning Committee's Stage 1 Report on the Bill (the **Stage 1 Report**)<sup>4</sup> was published on 29 February 2024.

The Stage 1 debate on the Bill took place on 12 March 2024, and Parliament agreed to the general principles of the Bill on the same date. We issued a briefing ahead of the Stage 1 debate (the **Stage 1 Briefing**).

The Bill completed Stage 2 on 23 April 2024, following consideration by the Local Government, Housing and Planning Committee during its meeting on the same date. The Bill as amended at Stage 2 was also published on 23 April 2024.<sup>5</sup>

We welcome the opportunity to consider and provide comment on the Bill ahead of the Stage 3 debate scheduled for 14 May 2024.

## General Remarks

We welcome measures to improve the safety of residents and owners of buildings with an external wall cladding system in Scotland. We recognise the importance of rapid progress being made as a priority, given the urgent need to remediate the safety issues posed by cladding.

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<sup>1</sup> [Housing \(Cladding Remediation\) \(Scotland\) Bill](#)

<sup>2</sup> Further information on our engagement on the Bill to date, including the links to the relevant documents, can found on our website, accessible [here](#).

<sup>3</sup> More information can be found [here](#).

<sup>4</sup> [Stage 1 Report](#)

<sup>5</sup> [Housing \(Cladding Remediation\) \(Scotland\) Bill – As amended at Stage 2](#)

We have highlighted in our evidence and engagement on the Bill to date areas where greater clarity and further consideration would be welcomed to better achieve its aims, ensure the proposals operate effectively, and integrates effectively and consistently with the wider legal framework in this area. We have summarised some of these key points below and otherwise refer to the Stage 1 Briefing where relevant.

We have also provided comments on certain changes made to the Bill at Stage 2, and on some of the prospective amendments to be made to the Bill at Stage 3.<sup>6</sup>

We broadly consider that the structure of the Bill gives the Scottish Ministers an effective and time-efficient process to arrange for remediation works to be carried out. The speed and cost effectiveness of the remediation works will be a function of the ability to carry out a single-building assessment (**SBA**) and (if applicable) an additional work assessment, to design and specify the works to be carried out, and to carry out the works. These pertain more to practical matters.

We consider that the proposed Cladding Assurance Register (the **Register**) may not fully deal with the current challenges around re-mortgaging, buying, selling, and insuring – and suggest that additional stakeholder engagement, secondary legislation, and other guidance considers further points concerning what happens once a property is placed on the Register and related transactional and transitional matters.

## Stage 2 Amendments

### Timing of entry onto the Cladding Assurance Register

We note the changes made to section 1 at Stage 2 regarding when an entry is to be made in the Register. In summary, these provide that a building is to be added to the Register once an SBA has been carried out. The entry for that building is then to be updated to reflect any additional work assessments and when the works have been completed.

We noted in the Stage 1 Briefing that “we think that it is appropriate for accurate information to be accessible on the Register from an early point in time in the process”. We therefore welcome that information will now be made available on the Register at this earlier stage. We consider that there would be merit in a building being put on the Register from the date of the pre-assessment notice under section 3 of the Bill, which would be a more definite date and mean that the same information is available to all parties at the same point in time.

We further consider that it would also be useful for the Register to contain the dates of the relevant notice(s) issued prior to completion of the works.

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<sup>6</sup> [Marshalled List of Amendments for Stage 3](#)

## Responsible Developers Scheme – Consultation requirement

We welcome the addition of section 20(5), which requires the Scottish Ministers to consult the persons listed at section 20(5)(a) and (b) before making the relevant regulations to establish a Responsible Developers Scheme under section 20(1).

We have commented in more detail below on the Responsible Developers Scheme.

## Stage 3 Amendments

### Amendments 2 and 3

We previously expressed concern at section 10(5) of the Bill, which provided that an appeal against arranged remediation work would be deemed dismissed if the sheriff had not determined it within 21 days – noting that it would be inequitable for an otherwise valid appeal to be dismissed due to delays in a court process.

We therefore welcome these amendments, which replace this provision and set out greater detail on the appeals procedure in these circumstances.

### Amendment 8

The amendment inserts the following text in section 28: *“It is for the Scottish Ministers to determine any question that arises as to whether, and to what extent, a structure constitutes, or a number of conjoined structures constitute, one building for the purposes of any provision of this Act, and their decision is final.”*

It is important that the terms of the Bill and subsequent secondary legislation provide legal clarity, and we consider that this amendment should not be seen a substitute for this. Should further provision on these points be provided for in secondary legislation, it may be appropriate for this to detail a process for how parties can seek clarity on these points.

## Further comments

### SBA and Additional Work Assessments

We would welcome greater detail on the proposed methodology for assessing whether works are identified as being required in an SBA report or an additional work assessment report. We note the current requirements under the EWS1 process and form. We consider that potential issues – such as causing market disruption – could arise if the methodology used in relation to the reports is materially different. For example, if this would mean that a property could be compliant under the methodology used in relation to one, but not under the other.

We consider that there would be merit in recording that a particular building is excluded from being within the ambit of an SBA. In particular, for buildings where it

is not clear whether or not they would qualify, it would be efficient if this could be determined once, rather than for the question requiring to be answered each time it is sold, and being determined by different people each time (with the risk of different conclusions being reached). At present, we understand similar issues can arise in respect of EWS1 forms when buildings are exempted, such as when lenders nonetheless require these to be produced – which can cause delays and questions as to whether the cost is met by the seller or purchaser of the property.

## Section 6

Section 6(1) sets out the provisions for Scottish Ministers to arrange for work to be carried out that is identified in an SBA report or an additional work assessment report.

We envisage that a number of steps will be required in order for there to be sufficient detail to “arrange for work to be carried out”. These may include, for example, (a) once an SBA or additional work assessment identifies a risk associated with cladding, identifying the preferred solution to address that risk; (b) generating a detailed design for that solution, including a specification of materials; (c) obtaining any necessary consents; and (d) tendering for the works.

Greater clarity of the process here would be welcomed, particularly in relation to the level of detail of the works that the SBA report and additional assessment report is to contain.

## Section 10

Section 10(1) of the Bill provides that the right to appeal arises following the owner of premises having received notice under section 6 that the Scottish Ministers have “arranged for the work to be carried out on the premises”.

The Revised Explanatory Notes<sup>7</sup> refer to the “Scottish Minister’s decision to arrange for work...” (paragraph 48), whereas the Bill uses the terminology that the Scottish Ministers “have arranged for work...” (section 10(1)). Greater clarity on this process would be welcomed.

We note that depending on the interpretation of the text “have arranged for work...” this creates a situation where the Scottish Ministers will not be able to confirm to the contractors when or if they will be able to start works at the time at which they instruct them. There would be period of uncertainty of at least 21 days during which an owner has a right to appeal without the sheriff’s permission, and 42 days (or longer) if an appeal was made, and during which the works would have to have been arranged on a conditional basis.

Please also refer to our comments above regarding amendments 2 and 3 to be considered at Stage 3.

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<sup>7</sup> [Revised Explanatory Notes](#)

## Responsible Developers Scheme – General comments

We note that there is substantial detail to be set out in regulations, in particular in relation to the Responsible Developers Scheme. We recognise the potential benefits of this approach, for example allowing greater flexibility in designing and implementing the underlying proposals, particularly should these evolve over time. We nonetheless highlight the need for flexibility to be appropriately balanced against ensuring there is clarity in the law, appropriate levels of parliamentary scrutiny underpinning legislative and policy developments, and meaningful stakeholder consultation.

In relation to regulations made in this context, we welcome the use of the affirmative procedure (as provided for at section 30(2)).

Without greater detail as to the proposed measures and how they will operate in practice, it is difficult to fully understand and assess their likely impacts, particularly on those operating in the sector.

## Interpretative provisions

Section 25(1)(a)(v) provides that one of the criteria for being within the ambit of an SBA is that the building has undergone development between 1 June 1992 and 1 June 2022. Section 24(9)(a) defines the meaning of “development” as used in section 24, but there is no definition for its usage in section 25. Clarity would be welcomed here.

Section 25(1)(c)(i) refers to the SBA being carried out “in accordance with the standards for the time being specified by the Scottish Ministers”. Greater clarity would be welcomed on whether these are the standards that would specify what amounted to a “risk to human life that is (directly or indirectly) created or exacerbated by the building’s external wall cladding system”, referred to at section 25(1)(b)(i).

We note the definition of “premises” at section 28 of the Bill. Greater clarity and detail would be welcomed in relation to situations where a developer needs to use additional land – which is owned by someone unaffected by the cladding issue – that is required to carry out remediation work, and the powers to use such land for these purposes.

For further information, please contact:

Policy Team  
Law Society of Scotland  
0131 476 816  
[policy@lawscot.org.uk](mailto:policy@lawscot.org.uk)