

# **The Chartered Institute of Building (CIOB)**

submission to

## **The Local Government, Housing & Planning Committee**

on the call for views on the

## **Housing (Cladding Remediation) (Scotland) Bill**

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# **CIOB Response – Housing (Cladding Remediation) (Scotland) Bill – call for views – Local Government, Housing & Planning Committee**

## Introduction

The Chartered Institute of Building (CIOB) is the world's largest and most influential professional body for construction management and leadership. We have a Royal Charter to promote the science and practice of building and construction for the benefit of society, and we have been doing that since 1834. Our members work worldwide in the development, conservation and improvement of the built environment. We accredit university degrees, educational courses and training. Our professional and vocational qualifications are a mark of the highest levels of competence and professionalism, providing assurance to clients and other professionals procuring built assets.

## Full Response

- 1. Do you think this legislation will deliver quick and cost effective remediation of potentially flammable cladding systems found on some modern blocks of flats in Scotland?**

**What, if any, amendments could be made to the Bill that would further speed the delivery of cladding remediation?**

Ultimately, while this legislation is a welcome and necessary response to recent tragic failings in building safety and quality, the solution going forward must be robust and many details are yet to be determined. Key questions remain regarding timescales; the scope of Single Building Assessments (SBA); required qualifications for those undertaking SBAs; implementation of the legislation; the process for funding remediation works for orphan buildings; and the items contained therein. Each one of these issues must be carefully considered in collaboration with stakeholders from the industry.

We believe that the Bill sets out important preliminary powers for Government in order to move forward to remediate buildings in Scotland. However, the devil will be in the detail. The success of this legislation, and the wider SBA and remediation programme, will be heavily dependent on how these new powers are implemented. Of particular importance will be the specifics regarding the content and scope of the SBA and the timelines and details of when buildings that have undergone remediation works are added to the Cladding Assurance Register.

While speed and cost efficiency are important, the primary aim of this legislation should be to ensure a comprehensive stock-take is carried out to understand the extent of remediation work that is required in Scotland. Therefore, while we understand the need to ensure that legislation is in place to deal with Scotland's cladding crisis as soon as possible, we advise caution in expediting crucial work. Rushing through legislation will heighten the risk of making mistakes, not communicating properly with industry and the wider public as well as risking buy-in from the construction sector.

Lessons can be learnt from some of the failings of the Building Safety Act 2022. It is widely accepted that the UK Government did not communicate effectively with the industry prior to implementing the legislation or throughout the release of secondary legislation. This has led to significant confusion and concern within the industry. Many key stakeholders are not aware of the new roles and responsibilities

of the new building safety regime in England. On that basis, we advise that the Scottish Government takes their time to communicate the impacts of this draft Bill and any forthcoming secondary legislation.

As a professional body, we stand ready to collaborate with Government to ensure that these details do not result in negative unintended consequences for the cladding remediation programme or the safety of buildings and their occupants.

**2. Do you think the Register will resolve the challenges around re-mortgaging, buying, selling, and insuring properties with potentially unsafe cladding?**

**Are there any other measures necessary to respond to these challenges?**

While the powers granted within this legislation could, in principle, help to address some of the concerns regarding re-mortgaging, buying, selling and insuring properties with potentially unsafe cladding, there are specifics regarding the Cladding Assurance Register that must be agreed in consultation with industry if negative unintended consequences are to be avoided.

Questions remain about when a remediated building will be listed on the Cladding Assurance Register. These questions relate to cases where developers have completed their portion of remediation works, but homeowners have not yet completed other work that is identified under the Single Building Assessment, but outwith the scope of the developers' responsibilities. In such cases, or in cases where remediation works are scheduled but have not yet been carried out, there may be valuation implications for buildings that are not yet able to be listed on the register. Therefore, it is imperative that further consideration is given to the scope of information listed on the Register, specifically related to buildings with work scheduled or in progress.

Further, there are concerns related to the access to this Register. This information should be publicly available. We are concerned that s.1 (5) grants powers to Scottish Ministers to charge for access to the register, as this may create barriers to access for certain parties and thereby remove parity of access for all. A key aspect of the Building Safety Act 2022 is the accountability that it places on developers to fix historic mistakes or failings as well as improving residents' engagement. This can be echoed here by making the register available for all, especially those who live in buildings where work needs to be carried out.

Additionally, we are concerned about the implications of this legislation for the availability and affordability of insurance products, and particularly professional indemnity insurance for those who are charged with carrying out Single Building Assessments. Many of our members have voiced concerns that insurance will become prohibitively expensive or impossible to purchase as a result of the Building Safety Act 2022. While the scope of the proposed legislation in Scotland is different, concerns remain that similar challenges in accessing affordable and comprehensive insurance could arise from this legislation.

There is an issue with both the availability and/or affordability of PII and we are also seeing restrictions on cover to exclude fire safety. Ultimately, this is an insurance product, and we know that pricing has been historically low and what we are seeing is partly a market adjustment. Construction projects will continue to go ahead, but contractors will look to pass on the additional cost to the client, potentially leading to clients accepting lower levels of indemnity. We might also see more take up of Project Insurance (also known as Owner Controlled Insurance Programme). We have seen that that restriction of cover has implications for those undertaking EWS1 inspections and have concerns that similar issues could arise for those charged with conducting SBAs.

- 3. Experience shows that it can prove difficult to secure consent for cladding remediation work from all owners within a block of flats. Do the provisions in the Bill adequately address this issue? If not, what changes need to be made?**

**Are the appeal mechanisms and timescales for those appeals sufficient?**

Through our work in areas related to the challenges arising from mixed tenure buildings, in particular our participation in the Scottish Government's Tenement Maintenance Working Group, CIOB accepts the challenges that Scotland's tenure system poses to the access required not only to undertake Single Building Assessments, but also to complete the necessary remediation works identified through SBAs. Given the possible risk to life posed by unsafe cladding, we support the new powers granted within the Bill to allow Ministers to proceed with Single Building Assessments and cladding remediation works, if necessary, in the absence of owner consent.

We do not have any concerns with the timelines specified and believe that the scope of these new powers is commensurate with the safety risks posed by unsafe cladding and will allow the Government to proceed with haste in assessing the safety of potentially high-risk buildings within this challenging framework.

- 4. Do you think this scheme will expedite the process of remediating buildings with potentially unsafe cladding?**

**Do you think it is proportionate to prohibit developers who fail to comply with the schemes terms from carrying out major developments and gaining building control sign-off in Scotland?**

**Much of the detail of the scheme is left to secondary legislation. Should more of the detail be on the face of the Bill?**

We understand the preliminary legislation is required in order to address and navigate Scotland's unique tenure system and facilitate expedited access to buildings first to undertake SBAs and, from there, undertake remediation works in the absence of complete owner/occupier consent. Therefore, the initial scope of the Bill is commensurate with the need to grant these Ministerial Powers without the delays that would result from including additional detail in primary legislation.

Upholding the safety of our built environment is of paramount importance, not only in remediating buildings with existing safety concerns, but also in ensuring the quality and safety of buildings being planned and built today. Therefore, we believe that it is proportionate to prohibit developers who fail to comply with the schemes' terms from carrying out major developments and gaining building control/standards sign-off in Scotland. However, there are many details left to be determined including the process through which noncompliant developers will be denied the ability to develop and/or prohibited from gaining building control/standards sign-off.

However, the success of the new regime is heavily dependent on the content of secondary legislation. There are still many aspects of the Bill that are not clear to the industry and require further detail to be able to be adopted as regular practice. As secondary legislation is developed, it is imperative that Scottish Government engage and communicate with industry bodies. This will avoid unintended consequences by enabling industry bodies to clearly communicate complex aspects of the Bill to their

members, and to ensure that the industry is trained and prepared to navigate new regulations and processes.

It would also be useful from an industry perspective for the Scottish Government to produce indicative timelines for any upcoming building safety legislation or secondary legislation related to this Bill. We understand any hesitancy to commit to a timeline given the complex nature of this type of legislation and the likelihood of potential delays. However, if caveated that it may change as progress is made towards fixing the cladding crisis continues, it would be a useful tool for the industry to be able to prepare for future changes to way they work. Whilst it came very late in the day in England and Wales, a similar timeline did provide some clarity for those working on Higher-Risk Buildings. Such a timeline was developed and published by the UK Government to communicate the timeline for expected secondary legislation following Royal Assent of the Building Safety Act which can be viewed here: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/999356/Timeline\\_for\\_Transition\\_Plan.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/999356/Timeline_for_Transition_Plan.pdf).

In particular, we are concerned with the lack of clarity provided on the criteria set out for those charged with carrying out Single Building Assessments. In order for both clients and the regulator to have assurance of the safety of buildings, they will need to be confident that those undertaking SBAs have the necessary qualifications and competencies, and thought must be given to whether the current educational infrastructure is adequate.

It is important that criteria are designed that ensure the objectivity and competence of those appointed to these roles. We note that under Section 35 of the Building Safety Act 2022, competency plays a significant role, with workers required to have the right skills, knowledge, experience and behaviours – typically known as SKEBs.

Further, there will be a knock-on effect in the industry as it continues to face skills shortages across the board and this new role/requirement will add further pressure to this system. To prepare for the new competencies outlined in the Building Safety Act 2022, CIOB in England has released several new qualifications to sit alongside our existing training offers. We would be delighted to work alongside Scottish Government to ensure that there are sufficient training opportunities and frameworks to ensure a robust supply of individuals with the necessary competencies to undertake SBAs. Given there is already a significant skills shortage in the industry for building control professionals, it is imperative that the required qualifications and frameworks for SBAs are given careful and early consideration in collaboration with professional bodies.

Similarly, consideration must be given to the capacity of planning and building standards departments across Scotland as the implementation of the SBA and cladding remediation programme may add additional time and volume pressures to an already resource-strapped environment.

##### **5. Is there a need to make provision for non-residential buildings with potentially unsafe cladding?**

While we support a risk-based approach to the implementation of this legislation, we also acknowledge the practical difficulties that will come with implementation. Therefore, we understand that the scope of the Cladding programme should begin with a narrower definition, but one which is capable of being extended regularly through revisions to secondary legislation. After suitable reviews it could extend to bring a much wider range of buildings into scope of the enhanced regulatory regime. Notably, boarding schools, university residence halls, hospitals, places of lawful detention, and all other buildings in which people will sleep or that vulnerable people will use.

Creating an enabling piece of legislation will allow future amendments to be made to improve the safety of all 'at risk' buildings, further promoting a positive culture change across the built environment.