



Ministry of Housing,
Communities &
Local Government

Building Safety Fund

for the remediation of non-ACM Cladding Systems (England
only)

Registration prospectus

May 2020

Ministry of Housing, Communities and Local Government



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If you have any enquiries regarding this document/publication, complete the form at <http://forms.communities.gov.uk/> or write to us at:

Ministry of Housing, Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF
Telephone: 030 3444 0000

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Building Safety Fund for the remediation of non-ACM cladding systems

Introducing the fund

The government announced a new £1bn Non-ACM Cladding Systems Remediation Fund ('the fund') in the Budget on 11 March 2020, to fund the remediation of **unsafe non-ACM cladding systems** (including, for example, certain types of other metal composite or High Pressure Laminate panels) on buildings that are 18 metres and over in high rise residential buildings.

This prospectus sets out the buildings and non-ACM cladding systems (Annex A) that are eligible for funding and asks potential applicants to the fund to register their building(s).

The fund is aimed at making sure tenants, leaseholders and residents living in buildings covered by the fund are safe and feel safe by remediating unsafe non-ACM cladding systems. These will be cladding materials and systems that do not meet an appropriate standard of fire safety and could pose a significant risk to the health and safety of residents, other building users, people nearby or the fire and rescue services. Building regulations have, since the mid-1980's, set a legal requirement that external walls should adequately resist the spread of fire.¹ Statutory Guidance (Approved Document B) has set out a number of routes and standards by which that requirement may be met. The consolidated advice note issued by the expert panel on 20th January 2020² sets out those materials which are unsafe. Further detail can be found at Annex A.

The fund will meet the cost of remediating non-ACM cladding systems where building owners (or other entities legally responsible for making buildings safe) are unable to do so. The fund will address some of the barriers to remediation being carried out quickly.

The intention in asking building owners, freeholders or other responsible entity to register to the fund now is to enable the program to confirm eligibility for the fund in principle, based on a technical assessment of the height of the building and an assessment of the non-ACM cladding system. The registration process will open in the first week of June and will remain open until 31st July 2020.

Once buildings are registered with the program the Department will work with building owners to complete any technical assessments necessary to determine eligibility. Full guidance and an application process for buildings which meet the technical criteria will be available by the end of July 2020.

This will enable the full application process to proceed at pace. Where building owners have the capacity and capability to undertake identification activity the Department expects they will continue to do so. Further support for building owners will be available once registered.

¹ Building Regulation B4. (1) *The external walls of the building shall adequately resist the spread of fire over the walls and from one building to another having regard to the height, use and position of the building.*

² <https://www.gov.uk/government/publications/building-safety-advice-for-building-owners-including-fire-doors>

What should I do if I'm a resident?

This fund is designed to ensure residents are safe and feel safe. We know that too many residents are facing significant bills to ensure their homes are safe. This is not acceptable and the Government expects that building owners will do the right thing and remediate unsafe cladding on buildings without seeking funding from residents who were not at fault, or from the taxpayer.

Where building owners cannot do this, this fund will ensure that building owners who have no choice but to seek funding from their leaseholders do not need to do so.

Residents should **not** submit a registration to the fund. If you know or are concerned that your building might have unsafe cladding, you should contact your building owner or manager to ask them to confirm what action they are taking. Steps you could consider include:

- Contacting your building owner or managing agent to ask for confirmation that the cladding system on your building is safe. You can ask to see a copy of the most recent Fire Risk Assessment for the building.
- If the cladding on your building is not safe, seek confirmation as to the actions your building owner is taking and how they intend to finance the work. If your building owner cannot meet the costs themselves or intends to charge you for the remediation, you should refer them to this fund.
- If your building owner is not taking action or intending to charge leaseholders for the remediation of a cladding system, you can notify us using the form provided at <https://www.gov.uk/guidance/remediation-of-non-acm-buildings> providing basic details of your building, the owner or managing agent, and the type of cladding you believe is present if known to you. This will be available from the 1st of June.
- If you are concerned about a fire safety risk which your building owner or managing agent is not addressing, you should contact your local Fire and Rescue Service or Local Authority for advice.
- you can contact LEASE, the advisory service, for help in understanding your lease, rights and responsibilities. <https://www.lease-advice.org/>

This fund will not meet the cost of interim safety measures such as Waking Watches. However, it is designed to ensure that the remediation required to remove those measures is undertaken as quickly as possible.

Please note that if we experience a high volume of e-mails we will not be able to reply individually but we will prioritise contacting building owners who are not taking steps to make buildings safe. Your building owner or managing agent should not be waiting for the fund to be open, they should have begun planning the work already.

Scope of the fund

In the private sector, where eligible, the Building Safety Fund will meet the capital costs of removing and replacing unsafe non-ACM cladding systems on high rise residential buildings which would otherwise be passed on to leaseholders.

In the social sector, where providers qualify, the Department will meet the capital cost of the remediation to high rise residential buildings regulated as social housing. For social providers whose viability is not threatened by the cost of work, we will open a claim process in July 2020 to meet the remediation costs which would otherwise be passed to leaseholders.

In both sectors funding for mixed use residential and commercial developments will be accepted.

In both sectors, the fund will not be available for:

- remediation work on buildings with non-ACM cladding systems in scope that had been committed to, or where work had started on site, prior to the Budget announcement on 11th March 2020.
- other non-residential buildings, for example Hotels, Hospitals and buildings where there are no residential leaseholders.
- buildings under 18m in height (allowing for a 30cm tolerance as set out below)

Who is eligible to register for the fund?

In the private sector, registration is open to building owners, freeholders or the responsible entity³ for buildings within scope that

- **have** or **may have** unsafe non-ACM cladding systems as part of the external wall system. For example, some types of other (non-Aluminium) metal composite panels, High Pressure Laminate, render and timber wall systems where these do not meet fire safety standards.
- where there are leaseholders who would otherwise be obliged to pay for the cost of remediation through their service charge
- Social housing units held in blocks owned in the private sector will be eligible as part of the relevant application for that building.

Further detail on materials in scope of the fund can be found in Annex A.

In the social sector, the registration process is open to registered providers of social housing. Whilst it is not a requirement for providers to have residential leaseholders to receive funding, the Department will only fund works where remediation costs threaten the financial viability of the provider or the Housing Revenue Account. For local authorities, this will require a declaration from a section 151 officer at registration phase. Registered Providers (Housing Associations) will be required to provide a business case to the Department setting out their financial position and options. The Regulator of Social Housing must be notified as soon as possible.

Social Providers can also claim from Government a contribution to their remediation project which will be equivalent to the service charge increase which would otherwise be passed to leaseholders, including those in Shared Ownership properties. This funding will be available in 2020/21. Registered providers should **not** register for the scheme in order to claim this funding. The Department will set out a claims process alongside the full

³ A responsible entity is the body that has the legal right to carry out the remediation works and to legally recover the costs from leaseholders as service charge.

application guidance in July.

In cases where there is doubt about who is eligible to register, registrations should be made by the building owner. The due diligence process undertaken will help identify the correct party to submit a full application and with whom Government can enter a funding/grant agreement. In the private sector the full application will be submitted by the responsible entity; in the social sector, by the registered provider.

Where multiple buildings are owned, including in a single development, please complete one registration form for each building.

The registration form should not be used, nor should applications to the fund be made where there is no intention of drawing on tax-payer funding to complete remedial work.

Registration will not be accepted from leaseholders but they should encourage their landlords/building owners or managing agents for the building to do so if costs would otherwise be passed to leaseholders.

Eligibility for buildings with ACM cladding

The fund is in addition to the separate funding and work underway to remove ACM cladding systems on High Rise Residential Buildings, which was identified as a priority for remediation after the Grenfell Tower Fire.

Responsible entities for buildings with unsafe ACM cladding systems should already be in contact with the Department and/or delivery partners regarding a funding solution for remediation of their building. They should continue to work through the private or social sector ACM cladding remediation funds as appropriate, including for funding for remediation of any unsafe non-ACM cladding systems, which may now be in scope for the Building Safety Fund.

When should I register?

The **registration** process will open on the 1st June and close on 31st July. Applications for funding will only be available to those building owners, freeholders or responsible entities who register. If for good reason applicants are unable to meet the deadline they should contact the Department at the earliest opportunity.

The Department will open a full application process by the end of July 2020. Our stakeholder management team are ready to support you in identifying your cladding and determining whether your building qualifies for funding.

Registration will not guarantee that a building will receive funding through the full application process, but it will help ensure that building owners receive support, where necessary, in identifying the materials present on their building and in planning the remediation work. To submit a full application a building must register with the scheme.

To access funding the Department will expect that work can commence on site in the 2020/21 financial year. Buildings will need to be registered within 8 weeks of the registration form being issued and submit a full funding application based on a tender price before December 2020. Though the Department will keep these deadlines under review, limited evidence will be required so building owners should have no reason not to register their

building as soon as possible.

Every building must be registered individually. Where multiple buildings are owned, including in a single development, please complete one registration form for each building.

How to register?

The online expression of interest form will be available from 1st June, on the Building Safety Fund page on the government website. <https://www.gov.uk/guidance/remediation-of-non-acm-buildings>

At registration, responsible entities are being asked to self-certify the eligibility of a cladding system for the fund and provide initial information on their external wall system, via a series of questions in the form at Annex B to this prospectus.

If a building owner is in any doubt as to whether their cladding system is unsafe, they should register in the first instance, ensuring they do so before the 31st July.

How will funding be allocated?

The registration process will identify whether building owners have explored every opportunity to fund remediation from sources other than private residential leaseholders and Government funding.

The fund has a maximum value of £1bn and at application stage will be managed on a first come first served basis. There is no limit to the number of registrations the Department will accept although the Department will cease to accept full applications once the funding is forecast up to this value.

More detail will be set out in full application guidance to be issued in July 2020.

Why should building owners engage with the registration process?

Building owners, freeholders or the responsible entity have a legal responsibility for the repair, condition and safety of their buildings and to act promptly to ensure that their buildings and residents are made safe. This legal responsibility applies to the removal and replacement of a range of unsafe non-ACM cladding systems, that have been determined by MHCLG testing, expert panel advice, and expert verification, to be a fire safety risk.

Government expects that existing commitments to remediate to be honoured and where possible, we expect plans to identify and remediate unsafe cladding systems to be put in place and funded by building owners; and that building owners do not pass costs on to leaseholders.

Where that is not possible, the registration process is aimed at identifying buildings within scope of the fund. Building owners should register where they are aware their external wall system is unsafe and/or where there is any uncertainty as to its construction. Building owners should take their own reasonable steps to ascertain the construction of their external wall system, but where they are unable to do so additional support will be available from MHCLG to assist in determining the eligibility for the fund.

Remediating unsafe non-ACM cladding systems swiftly will avoid the need for further action, including enforcement action. Local authorities have enforcement powers under the Housing Act 2004, which can include prohibition notices. The Fire Safety Bill, which is currently before parliament, will put beyond doubt that fire and rescue services enforcement powers can also be used in relation to unsafe external wall systems. We will work with local authorities and fire and rescue services, including through the fire protection board, to ensure that they are considering enforcement action in relation to any un-remediated unsafe high-rise building, where work is not taking place quickly enough.

Non-ACM cladding systems

The fund will only be available for remediation of unsafe non-ACM cladding systems (*in-scope remedial works* – see Annex A) on high rise residential buildings 18 meters or higher, with an allowable tolerance of 30cm under this height. Details on how to measure your building are included in the technical Annex.

The fund will apply to removal and replacement of cladding systems with panels achieving European Class C-s1,d0 or worse in combination with any class of insulation, or cladding systems with panels achieving European Class B-s1,d0 to Class B-s3,d2 with insulation achieving Class B-s1,d0 or lower, unless the system has achieved a BR135 certificate via a BS8414 test. In most cases it is expected that cladding using the materials listed above would not have been able to achieve a BR135 certificate via a BS8414 test. Any building with insulation, or filler, achieving Class B-s1,d0 or lower that is not installed in line with a system that has a BR135 certificate via a BS8414 test will also be eligible to register

How will the registration process determine eligibility for the fund?

Following registration, MHCLG will contact you to ask for supporting evidence for your technical eligibility for the fund. This will include evidence of the height of your building and evidence of the materials that are in place (e.g. as built drawings, operation & maintenance manual, report from suitably qualified construction professional and/or photographs of product labelling).

Once a technical assessment of the building is complete, it will then move into a formal application phase if it is determined as eligible for the fund. This will be administered by our partners in Homes England and the Greater London Authority. The full application process will involve legal and project related due diligence to ensure MHCLG is paying the right entities for appropriate cladding replacement solutions. MHCLG will make decisions on the approval of applications. Where a remediation project has not yet been developed to the stage at which construction can commence, early funding may be available for this design phase subject to a satisfactory application.

Further guidance on these application processes will be made available to qualifying responsible entities following registration.

What costs would be covered by the fund?

Subject to eligibility, state aid checks and qualifying leasehold arrangements, MHCLG will meet the capital costs associated with the remediation of non-ACM cladding systems that are found to be unsafe in that they do not meet an appropriate standard of safety and could pose a significant risk to the health and safety of residents, other building users, people in

the proximity of the building or firefighters; as set out in the advice note issued by the expert panel on 20th January 2020.

<https://www.gov.uk/government/publications/building-safety-advice-for-building-owners-including-fire-doors>

Eligible costs will be those costs which could be attributed to the capital costs⁴ of the project. Ongoing revenue costs, such as the cost of interim safety measures, are not eligible. The fund will provide a grant to cover the ‘reasonable’ cost of eligible items only.

Reasonable costs will be informed by an industry standard approach to specification and procurement of works having regard to cost benchmarks established from comparable projects. Higher than expected costs will be challenged and will be subject to further scrutiny and the level of grant may be reduced.

The table below sets out indicative example to help you understand the scope of government funding.

Eligible items covered by the fund	The fund will <u>not</u> cover
<p>Works directly related to the replacement of unsafe non-ACM cladding systems⁵ including:</p> <ul style="list-style-type: none"> • access (e.g. scaffolding, mast climber etc) (only where apportioned appropriately directly related to qualifying works). • removal and disposal of existing non-ACM cladding. • replacement materials. • labour and reasonable on-costs to the contractor. 	<p>Works which are not directly related to the remediation of unsafe non-ACM cladding systems even where these may be planned to be undertaken at the same time. For example: wider redecoration, renewal and general maintenance, the replacement of windows or other elements, internal works or any other remediation, maintenance, repair or renewal costs.</p>
	<p>Other structural works which are not directly related to the remediation of unsafe non-ACM cladding systems</p>
	<p>Other necessary fire safety works which are not related to an unsafe non-ACM cladding system.</p>
	<p>Operational running costs, including those associated with interim measures such as waking watches.</p>
<p>Professional team fees in respect of qualifying items (*apportioned appropriately directly related to qualifying costs where a project also includes non-eligible costs). An initial grant may be provided where applicants are unable to cover project design and development costs.</p>	<p>Professional team fees in respect of non-qualifying items.</p> <p>Buildings where a warranty claim for the full costs of remediation has been accepted. Applications will be considered where recovery action is ongoing, this will be assessed when determining the grant</p>

⁴ For the purposes of this fund, capital costs are those identified in IAS 40 (Investment Properties) for properties held to earn rentals or for capital appreciation, or IAS 16 (PPE) for properties occupied by the owner or lessee or used in production or supply of goods or services or for administrative purposes.

⁵ A cladding system includes the components that are attached to the primary structure of a building to form a non-structural external surface. The cladding system includes the weather-exposed outer layer or ‘screen, fillers. Insulation, membranes, brackets, cavity barriers, flashing, fixings, gaskets and sealants.

	funding agreement
Managing agents' fees in respect of administering qualifying expenditure (*apportioned appropriately directly related to qualifying costs where a project also includes non-eligible costs)	Managing agents' fees in respect of administering non-qualifying expenditure.
Extraordinary technical requirements which incur extra costs essential to but not normally associated with removing and replacing unsafe cladding systems may be included. MHCLG will consider such requests for funding against relevant evidence.	Costs which would not otherwise be recovered from leaseholders through the service charge provisions in their leases ⁶ .

State Aid

European Union rules on State Aid determine the amount of state resources that can be used in projects of this nature. State Aid is any advantage granted by public authorities through state resources on a selective basis to any undertaking (i.e. any entity engaged in an economic activity) that could potentially distort competition and trade.

State Aid to any undertaking under this fund is being provided as de minimis aid under EU Regulation 1407/2013 (De Minimis Aid Regulation) as published in the Official Journal of the European Union on 24 December 2013. Full guidance on State Aid rules can be found at <https://www.gov.uk/guidance/state-aid>.

State Aid rules apply to any payments under this fund for the benefit of any private leaseholder who is an 'undertaking'. This includes commercial leaseholders and individuals who are landlords. Individuals who live in and own only their own home are not undertakings

Any payment made by the government which is subsequently found to be unlawful State Aid would need to be repaid. We will provide further guidance on State Aid (including template declarations) before the application process opens. In order to comply with State Aid regulations, there are certain actions that leaseholders and building owners, freeholders or the responsible entity will need to take as part of the fund application process following registration.

The Department has reviewed the process adopted under the Private Sector Remediation Fund for ACM Cladding and will simplify the process in the Building Safety Fund. It is for building owners to collect declarations from undertakings, where they do not receive a reply within 30 days, funding can still be provided to the building owner whilst declarations are being collected.

Building owners will be required to communicate requirements under State Aid to their leaseholders, asking them to provide a declaration if they are an 'undertaking' which will record any financial assistance that qualifies as 'state aid', which can be no more than €200,000 over a three-year fiscal period.

⁶ For example, hotels, hostels, purpose-built student accommodation uses, private rental sector (PRS) uses and PFI contracts are not eligible. Will not apply to Registered Providers who meet financial tests

Both commercial tenants and leaseholder landlords are required to complete the declaration referred to above. In what we would expect would be a very limited number of cases where leaseholders who are also 'undertakings' and have received state aid totalling more than €200,000 over a three-year fiscal period, the Department will be unable to make payments which cause the threshold to be exceeded.

Where funding is provided to, or in respect of service charges payable by Registered Providers of Social Housing, these are likely to qualify as exempt from State Aid regulations.

Further detail and advice on the actions that need to be taken to comply with State Aid regulation will be set out in the full fund guidance.

Planning and building control

As part of any expression of interest, local authorities and building control Departments should be contacted in order to facilitate timely completion of design and development work and an early start on site.

Where can I find further information and support?

Building Owners, freeholders and responsible entities

If building owners, freeholders or the responsible entity would like to discuss further, please contact us at bsf@communities.gov.uk

We encourage all leaseholders and leaseholder group representatives to contact their building owners to make sure they are aware of this publication and that they are intending to take forward the actions on identification of buildings within scope and the expression of interest process.

Although leaseholders should contact their responsible entity with queries about their specific building, LEASE will act as the point of contact for leaseholders with questions about the fund. If you are a leaseholder with an enquiry, please contact the Leasehold Advisory Service (LEASE) via <https://www.lease-advice.org/>

The Independent Expert Panel Advice can be found here: <https://www.gov.uk/government/publications/building-safety-advice-for-building-owners-including-fire-doors>