



Ministry of Housing, Communities & Local Government

GOVERNMENT FUND FOR THE REPLACEMENT OF UNSAFE NON-ACM CLADDING ON HIGH-RISE BUILDINGS (BUILDING SAFETY FUND)

Guidance on State Aid for Applicants

Introduction

The Government is committed to ensuring that residents are safe and feel safe in their homes. In March we announced that we will provide £1 billion in 2020 to 2021 to support the remediation of unsafe non- Aluminium Composite Material (ACM) cladding system on residential buildings 18 metres and over in both the private and social housing sectors. The Government has now established the Building Safety Fund (the Fund). The Fund will cover the cost of the replacement of unsafe non-ACM cladding on high-rise private residential properties in England. Funding will be provided to responsible entities who will be responsible for remediation, but the Fund will be for the benefit of leaseholders who would otherwise incur the cost through service charge provisions.

As described in the full application guidance,¹ payments in respect of each leaseholder from the Fund will need to comply with State Aid regulations. 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 in the European Union (EU).or within the United Kingdom.

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 2013.² The maximum amount of public funding (from all UK sources, including central and local government) that can be provided to any one Undertaking under the De Minimis Regulation is €200,000 over a three-year fiscal period.³

In the context of the Fund, by 'Undertaking' we mean any leaseholder in the building who uses their property for financial gain - for example letting it out or using it for their own business purposes. As commercial tenants by their nature carry out a business activity from their premises these will always be treated as undertakings. Residential leaseholders who only own property in the building which they occupy as their home

¹ See here: <https://www.gov.uk/guidance/remediation-of-non-acm-buildings#fund-application-guidance>

² Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352 24.12.13, p1.

³ Until 31 December 2020 the State Aid rules enforced by the Commission continue to apply in the UK. As set out in the technical notice on State Aid - <https://www.gov.uk/government/publications/state-aid-if-theres-no-brex-it-deal/state-aid-if-theres-no-brex-it-deal> – it is currently the intention that the Competition and Markets Authority will take on the role of enforcing and supervising the State Aid rules for the UK, from the point that this is necessary.

and do not let out will not be regarded as undertakings. An undertaking will also include any "linked enterprises" (this term is also explained in the De Minimis Regulation).

In order to establish if the De Minimis Aid Regulation applies to any leaseholders, applicants are responsible for ensuring that each leaseholder who is also an Undertaking completes a State Aid declaration.

In the case of an Applicant/Leaseholder that has underlet its property on long lease (more than 7 years) terms and passes down either the whole or part of its service charge obligation the undertenant is the aid beneficiary and the liability to pay the service charge (i.e. to cover the costs) should not be waived.

This guidance explains further what should be done at each stage of the application process.

Who can make an application to the Fund?

Applications can only be made by the responsible entity. Responsible entities are those organisations which have a legal responsibility for the repair, condition and safety of the building, and which have a legal right to recover the cost through the service charge. A responsible entity may be the building freeholder or head leaseholder or a management company that has primary responsibility for the repair of the property. A management company which is not the responsible entity (for example a Managing Agent) will still be able to apply and manage the application as an agent for the responsible entity.

State aid declarations

As stated above, the beneficiaries of the Fund are leaseholders who would otherwise incur the costs of replacement works of the cladding through the service charge provisions in their lease. In order to identify whether any leaseholders that are also undertakings have received any de minimis State Aid during this and the previous two years, each leaseholder that is an Undertaking must complete and sign a State Aid declaration – a template declaration for leaseholders to complete and guidance for leaseholders can be found at <https://www.gov.uk/guidance/remediation-of-non-acm-buildings#state-aid-guidance-and-declaration>. Applicants should review these documents carefully to ensure they understand what their leaseholders are being asked to do.

Applicants must send all leaseholders the template de minimis declaration, with an explanation that those leaseholders that consider themselves to be Undertakings must sign and return the form to the applicant and that leaseholders who are not Undertakings do not have to sign and return a declaration. A form of wording for applicants to send out to leaseholders with the template State Aid declaration for completion is set out below.

In order for us to access the Building Safety Fund, you will need to review the [attached/enclosed] document, called the "State Aid de minimis declaration". Certain leaseholders must sign and return this declaration to us to be able to have some or all of their service charge contribution for the cladding works covered by the Fund.

Not all leaseholders will need to fill this declaration in, but you must read it carefully before deciding whether it applies to you or not.

*As explained in the State aid Guidance for Leaseholders, residential leaseholders who own a property in the building which they occupy as their home (and do not rent it out) do **not** need to complete, sign and return a State aid Declaration.*

Only leaseholders who are Undertakings should complete and sign the State Aid declaration, and return it to us [at refer to contact details]. A leaseholder will be an Undertaking where they use their property for financial gain - for example letting it out or using it for their own business purposes. This includes:

- *Leaseholders who are incorporated*
- *Leaseholders who own more than two properties (in any building) unless they are for non-commercial use*
- *Leaseholders who let out any property (residential or commercial) in the building for financial gain.*

Leaseholders that are also undertakings should note that the following will apply to funds received from the Fund to cover their service charge contribution:

- *there is a limit on the amount of service charge they can be relieved of in respect of these works. That is the €200,000 maximum de minimis allowance permitted under the de minimis State Aid rules, which is calculated taking account of any other State Aid received by that leaseholder over the current and two previous financial years.*
- *If that limit were to be exceeded, or the State aid rules are not otherwise complied with, those leaseholders will be at risk of having to pay back this money with interest.*
- *where a part of the de minimis allowance has been received, this must be declared but the leaseholder will be permitted to take advantage of any unused part of the allowance.*

Applicants must **take reasonable steps to identify Undertakings and should start distributing and obtaining completed State Aid declarations from such leaseholders now**. For example, retail premises, coffee shops, supermarkets, etc and other occupiers of commercial space in the building will be regarded as Undertakings, as will multiple flat owners whether individuals or Buy-To-Let (BTL) investment companies and any leaseholder who owns their property in the form of a pension fund or family trust.

If you are in any doubt then you must send a State Aid declaration to any suspected Undertaking leaseholders. There is no need to wait until the costs of the works have been estimated or tendered for, as the declarations only record State Aid previously received by leaseholders.

As explained in the guidance for leaseholders, residential leaseholders who own a property in the building which they occupy as their home (and do not rent it out) will not

need to complete, sign and return a State aid Declaration. The following are examples of leaseholders who will need to complete and sign the State aid Declaration, and return it to the applicant:

- Leaseholders who are incorporated
- Leaseholders who own more than two properties (in any building) unless they are for non-commercial use
- Leaseholders who let out any property in the building
- Leaseholders who otherwise use the leased property only or mainly for commercial purposes.

Who should sign and complete the declaration?

All leaseholders who are obliged to pay service charge need to decide whether they are an Undertaking and if so should sign and complete the declaration.

- Where a lease names more than one leaseholder, each must sign a separate declaration.
- Where a private leaseholder owns or leases a number of different units which are sublet, then if each sublease contains an obligation to pay service charge on a throughput basis, then it is each subleaseholder who would need to sign a separate declaration, but only if a subleaseholder is an Undertaking.
- Where a leaseholder has further let their property on short terms (for example on an Assured Shorthold Tenancy) where the sub-tenancy would not require the sub-tenant to pay service charge, it will be the leaseholder (not the subtenant) who would need to sign the declaration.
- Where a leaseholder has further underlet their property for a period of more than 7 years this potentially brings the sub-tenancy within the scope of paying service charge and it is possible that the undertenant may legitimately be considered the appropriate beneficiary for receiving funding. In this situation this must be on the basis that he/she is required to pay service charge on the same terms as the superior tenant and use their property as their principal dwelling. If applicable, this means that the superior leasehold tenant (here an Undertaking) should be disregarded for Undertaking status.
- Where a local authority owns the building or has a lease or leases of units and lets to social housing tenants, then that local authority does not need to complete a State Aid declaration.
- Where a Registered Provider of Social Housing (RP) (or other provider of social housing owns the building or has a lease or leases and lets, then it will depend where the obligation to pay service charge rests;
- if with the RP or other social housing provider, then it does not need to complete a State Aid declaration (funding where an RP or other social housing provider is

the beneficiary will be provided via the Services of General Economic Interest state aid provisions, rather than de minimis);

- if with a shared ownership leaseholder who has not staircased to 100% the department will take a view that there is no Undertaking involved and the funding can be attributed to that leaseholder;
- if with any other leaseholder (e.g. where properties have been sold on open market terms or under RTB/RTA legislation or leaseholders have staircased to 100%) the leaseholders concerned should be considered in the same way as ordinary residential leaseholders and if they let their property for financial gain (i.e. they rent it out) they would also be considered an undertaking for State aid purposes and would need to complete a State aid Declaration.

It is important to note that if any leaseholders are not obliged to pay service charge, then they cannot be beneficiaries under the Fund.

Receiving back completed State Aid declarations

Where an applicant does not receive back from a leaseholder a completed and signed State Aid declaration within 30 days the applicant may assume that the leaseholder is not an undertaking if it has taken reasonable steps to identify Undertakings and it is reasonable to assume that a leaseholder who has not provided a declaration is unlikely to be an undertaking

If at any point during the application process (including after funding is approved) an applicant does receive a signed and completed declaration back from a leaseholder the applicant must update the Undertakings Summary Spreadsheet accordingly and advise their delivery partner as soon as possible.

Application Milestones

It is anticipated that your application will pass through the following project milestone points, each of which require different types of investigation / diligence. The milestones are set out below together with brief details as to the implications of each but in the context of State aid assessment this will take place at Stage 3, following submission of a full application for works and costs.

Stage 1 – Registration

The registration phase will quickly verify via use of desktop studies and self-certification / declaration confirmations provided by the Applicant within the registration portal that the building falls within the scope of the Fund, there are leaseholders within the Building the Applicant can charge for the cost of works and the Building is therefore potentially eligible for funding, subject to the requirement for further legal and technical diligence.

Stage 2 – Legal Eligibility

The second phase will assess whether the Applicant is obliged or entitled to conduct works to the building of the type envisaged by the fund (i.e. removal of unsafe non-ACM cladding and replacement with suitable alternative materials of limited

combustibility), their right to raise service charge in respect of qualifying works and that there is at least one residential leaseholder in the Building who would ordinarily be obliged to pay for the works via service charge commitments in their lease.

Stage 3 - Full Application

If Applicants have not already done so, they should send out letters to leaseholders with the State Aid declaration as described above.

During the application process, we may ask applicants to tell you how many State aid Declarations they have gathered so far. This information will allow us to understand progress on gathering declarations.

When they are ready, Applicants must submit a list of leaseholders within the building that are Undertakings, within the Undertakings Summary Spreadsheet, based on the completed State aid Declarations they have received back from leaseholders so far.

We will require applicants to inform us if any leases are assigned and the leaseholders change, as new leaseholders may also be obliged to complete a State aid Declaration.

When Applicants submit they must make sure they include any updated information as to completed State Aid declarations they have received.

In the Undertakings Summary Spreadsheet Applicants must identify the proportion of repair costs each leaseholder that is an Undertaking is responsible for via the service charge.

If it comes to our attention that any leaseholders, who are also Undertakings, will benefit from funding which exceeds the de minimis threshold (€200,000) either in relation to the units they own in the building or together with any prior State aid received, then it may be necessary for the Government to adjust any funding amount that might otherwise have been available.

The De Minimis Aid Regulation requires that beneficiaries are sent a letter setting out the value of de minimis aid which the Government is intending to grant to them. We will provide any letters relevant to your building to applicants and the Applicant must send these letters to the leaseholders identified.

Funding Approval & Post-Approval Period

If the application is successful, then MHCLG and our delivery partner will enter into a funding agreement with the applicant. From this point until the final payments of funds, Applicants will be required to update us with any changes in the leaseholders within the building (e.g. if a leaseholder sells their flat), and to provide an updated Undertakings Summary Spreadsheet .

Where the anticipated costs of the works exceed the funding agreed, Applicants will need to apply for an increase in funding.

Where a leasehold property is sold during the course of works, the original leaseholder will be treated as the beneficiary for all funding agreed before the date of sale. The new leaseholder who has bought the leasehold interest will only be treated as a beneficiary

of aid if any increase in funding is agreed after their date of purchase. In these circumstances, the new leaseholder would (if they hold Undertaking status) need to supply to the Applicant a signed State aid Declaration as their de minimis capacity to receive State aid will need to be assessed in relation to the additional funding required.

Additionally, where an increase in funding is required further assessment will need to be undertaken of the State aid capacity of those leaseholders who are Undertakings to receive an increased funding amount. Applicants should therefore be aware that the impact of the De Minimis Aid Regulations will be relevant in this context and should be taken into account when making any application for an increase in funding.

Applicants should also be aware that if it turns out that any payments under the Fund would not qualify under the De Minimis Aid Regulation, then we may be obliged to withhold or recoup those funds.