



Department for Levelling Up,
Housing & Communities

Building Safety Fund

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

Registration prospectus

May 2021 – updated April 2022

Department for Levelling Up, Housing and Communities



© Crown copyright, 2019

Copyright in the typographical arrangement rests with the Crown.

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit

<http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>

This document/publication is also available on our website at www.gov.uk/dluch

If you have any enquiries regarding this document/publication, complete the form at <http://forms.leveellingup.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

For all our latest news and updates follow us on Twitter: <https://twitter.com/DLUHC>

April 2022

Contents

| | |
|---|-------|
| Introducing the fund | 4 |
| Scope of the fund..... | 6 |
| Who can register for the fund?..... | 7 |
| Eligibility for buildings with ACM cladding | 8 |
| When should I register? | 8 |
| How to register? | 9 |
| How will funding be allocated? | 9 |
| Why should building owners engage with the registration process?..... | 9 |
| Non-ACM cladding systems | 10 |
| How will the registration process determine eligibility for the fund? | 10 |
| What costs would be covered by the fund? | 10/11 |
| Subsidy..... | 12/13 |
| Planning and building control | 13 |
| Where can I find further information and support?..... | 13 |

Building Safety Fund for the remediation of non-ACM Cladding Systems

Introducing the fund

The government announced a new 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. The fund was originally set at £1bn, and the Department announced a further £3.5bn to extend the funding in February 2021.

This prospectus sets out the buildings and non-ACM cladding systems (Annex A) that are in scope 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 addressing fire safety risk caused by 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-1980s, set a legal requirement that external walls should adequately resist the spread of fire.¹ Statutory Guidance (Approved Document B) has set out several routes and standards by which that requirement may be met. Further detail on systems eligible for funding can be found at Annex A.

The fund will meet the cost of addressing fire safety risk caused by unsafe 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 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 first tranche of the registration process opened in the first week of June and remained open until 31st July 2020. To ensure that every high-rise building with unsafe non-ACM cladding has the necessary work done to make it safe, we will open up the next phase of the Building Safety Fund early this year and focus relentlessly on making sure the fund is risk driven.

Once buildings are registered with the program the Department will work with the registrant (building owners or the responsible entity or agent) to complete any technical assessments necessary to determine eligibility. Full guidance and an application process for buildings which meet the technical criteria is available now from the gov.uk website.

This will enable the full application process to proceed. 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.*

Proportionality and the introduction of PAS9980:2022

In January 2022, the 'Building safety advice for building owners, including fire doors' (also known as the Consolidated Advice Note) which had been wrongly interpreted was withdrawn to ensure that it was not used to justify disproportionate assessments.

The Department also announced on that date the publication of new guidance, PAS9980:2022, which provides a clear and proportionate methodology for the Fire Risk Appraisal of the External Wall system (FRAEW).

The PAS 9980:2022 provides a methodology for the fire risk appraisal of external wall construction and cladding of existing multistorey and multi occupied residential buildings. It sets out steps that can be taken to identify and assess risk factors as well as mitigation steps that might improve the risk rating of a building via a holistic and fact-based assessment of a building's construction.

This new guidance provides a clear framework for the assessment of external wall system by a competent assessor, supporting a proportionate approach to building safety. For this reason, the Building Safety Fund (BSF) intends to utilise the findings of FRAEWs in its funding decisions. As a result, applicants may be required to supply a FRAEW done to the PAS9980:2022 methodology prior to any grant award.

What should I do if I'm a resident or leaseholder?

This fund is designed to ensure leaseholders and residents are safe from non-ACM cladding on their high-rise buildings. The Government expects those responsible for buildings (responsible entities) to remediate unsafe cladding on buildings without seeking funding from leaseholders who are not at fault.

This fund will not meet the cost of interim safety measures such as Waking Watches. For more information about interim safety measures, visit us on GOV.UK.

<https://www.gov.uk/guidance/waking-watch-relief-fund>

Leaseholders and residents should **not** submit a registration to the Building Safety Fund. If you know or are concerned that your building might have unsafe cladding, contact your responsible entity, defined in our glossary [insert link], and ask them to confirm what action they are taking.

Steps you could consider include:

- **contacting your responsible entity.** Ask for confirmation that the cladding system on your building is safe. Ask for a copy of your building's most recent Fire Risk Assessment (FRAEW)
- **If the cladding on your building is not safe,** ask your responsible entity what action they are taking and how they intend to finance the work. If your responsible entity cannot meet the costs themselves - intend to charge leaseholders for any future remediation work - refer them to the Building Safety Fund which will reopen this year [link to BSF page on GOV.UK]. However, your building owner or managing agent should not be waiting for the Fund to be open and should have started planning already

- **If your responsible entity has registered to the Building Safety Fund but still intends to pass on the costs** of work within the scope of the Fund, please email BSF [BSF@levellingup.gov.uk] providing your full name and the address of your property. We will then match your property to our records and take any action required.
- **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. They have enforcement powers and can take action where this is required [link to new leaseholder page on GOV.UK which goes live shortly].
- As a leaseholder, you can access free initial specialist advice to help understand your rights through the Leasehold Advisory Service (LEASE). More information on LEASE, including how to contact them for advice, can be found on their website: www.lease-advice.org
- The Department for Levelling Up, Housing and Communities is taking steps to improve the information available to leaseholders and residents about the Building Safety Fund (BSF).
- On 20 January, the Department opened the Building Safety Fund (BSF) Leaseholder and Resident Service. This Service gives leaseholders and residents access to information on where their building is in the application process: <https://www.building-safety-fund-status.communities.gov.uk/>
- The Service provides greater transparency: updated information will be published on the Service on the third week of every month so that individuals can track their building's BSF application progress.
- The Service also provides reassurance that government is funding remediation works and supporting engagement between those responsible for buildings and residents and leaseholders.

Scope of the fund

The Building Safety Fund objective is to address fire safety risks related to unsafe non-ACM cladding systems on high-rise residential buildings.

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 meet financial viability criteria, 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, a claim process was opened 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:

- For registrations between June and July 2020 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 1 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 can register for the fund?

In the private sector, registration is open to building owners, freeholders, the responsible entity² or an agent acting on their behalf 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.

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 taxpayer funding to complete remedial work.

² 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.

Registrations will not be accepted from leaseholders, but they should encourage their landlords/building owners or managing agents for the building to register if costs of eligible works would otherwise be passed to leaseholders.

Eligibility for buildings with ACM cladding

The Department laid amendments to the building Safety Bill on 14 February and 22 March which will fully protect qualifying leaseholders from the costs of cladding remediation.

The Department will continue to make funding available via the Building Safety Fund and other existing funding programmes] / [the Private Sector ACM Cladding Remediation Fund) for buildings currently in scope. This includes funding continuing to be made available for the share of the costs of works attributable to leaseholders who qualify for the Building Safety Bill protections from cladding remediation costs.

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. To ensure that every high-rise building with unsafe non-ACM cladding has the necessary work done to make it safe, we will open up the next phase of the Building Safety Fund early this year and focus relentlessly on making sure the fund is risk driven.

When should I register?

The registration process opened in June 2020 and closed on 31st July 2020. We will open up the next phase of the Building Safety Fund early this year for applicants to access the funds if eligible.

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. For the first tranche, the Department opened the full application process for buildings which meet the BSF's technical eligibility criteria at the end of July 2020. Our stakeholder management team are ready to support you in identifying your building's height, cladding, and determining whether your building qualifies for funding.

Registration will not guarantee that a building will receive funding through the full application process. However, 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.

It is essential that buildings with unsafe cladding are remediated as quickly as possible to ensure that residents are safe and feel safe in their homes. Full applications for the first

tranche to the Building Safety Fund must therefore be submitted urgently and for the second tranche as soon as the building is considered eligible.

How to register?

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

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 have registered in the first instance, ensuring they had done so by the 31 July 2020.

How will funding be allocated?

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

More detail is set out in full application guidance 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 addressing fire safety risks related to unsafe non-ACM cladding systems, that have been determined by DLUHC testing, 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. Further information is available in Annex A under 'Assessing your External Wall System'.

Addressing fire safety risks related to 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, and the Fire Safety Act 2021 puts beyond doubt that fire and rescue services' enforcement powers can also be used in relation to external wall systems. We will work with local authorities and fire and rescue services in their considerations of enforcement action in relation to any un-remediated high-rise building.

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: Fund Requirements*) 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 Prospectus Annex A: Technical Information.

The fund will apply to 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, we will notify you of the outcome. If the building is determined as eligible for the fund (for all or some of the external wall systems), you may be required to provide a PAS9980:2022 FRAEW prior to moving into the formal application phase. Private sector building applications will be administered by our partners in Homes England and the Greater London Authority. Social sector building applications will be administered by DLUHC. The full application process will involve legal, and project related due diligence to ensure DLUHC is paying the right entities for appropriate solutions. DLUHC 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 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, subsidy control checks and qualifying leasehold arrangements, DLUHC

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.

Eligible costs will be those costs which could be attributed to the capital costs³ 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 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 systems⁴ 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 funding agreement</p> |

³ 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.

⁴ 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.

| | |
|---|---|
| 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. DLUHC 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 ⁵ . |

Subsidy control

EU State aid rules no longer apply to subsidies granted from 1 January 2021 in the UK, except for aid within scope of the Withdrawal Agreement, including aid under Article 10 of the Northern Ireland Protocol. However, public authorities must comply with our international commitments on subsidies, and in particular the subsidies chapter of the UK-EU Trade and Co-operation agreement (TCA).

Previously under the state aid de minimis rules, an undertaking could receive up to €200,000 state aid over a three-year period. Economic actors may now receive up to 325,000 Special Drawing Rights, which is approximately £350,000, over three consecutive financial years, as Small Amounts of Financial Assistance which is exempt from the application of the TCA.

Funding provided for the benefit of leaseholders who are owner occupiers is unaffected as this does not constitute a subsidy. To receive the funding the leaseholder must be liable to meet the costs of remediation through the service charge provisions in their leases⁶.

Funding for the benefit of buy-to-let landlords, lessees of commercial premises and housing associations continues to fall within the scope of the rules, either on the basis of Small Amounts of Financial Assistance or Services of Public Economic Interest (SPEI) compensation under the TCA.

We will require declarations from leaseholders who are either:

- Leaseholders of commercial premises, **OR**
- Leaseholders of residential premises, that are economic actors **AND** they have received financial support previously from the state, in the form of a subsidy, within the past three years (including funding from the Private Sector ACM Cladding Remediation Fund (PSCRF) or BSF).

Applicants will be required to provide a list to Delivery Partners (DLUHC for social sector) of all leaseholders who they believe to be economic actors (including Registered Providers of Social Housing), and their proportion of the total service charge liability in the form of the

⁵ 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. Where leaseholders are not liable for the costs of remedial works via service charge under the terms of their lease, but the responsible entity for the building is a leaseholder-run Right-to-Manage company, these costs may still be eligible for funding.

⁶ Where leaseholders are not liable for the costs of remedial works via service charge under the terms of their lease, but the responsible entity for the building is a leaseholder-run Right-to-Manage company, these costs may still be eligible for funding.

Economic Actor Schedule together with their best assessment as to whether they operate residential or commercial activities. This includes any residential leaseholders who the applicant believes are economic actors but have not provided a declaration and any leaseholders who have returned a signed Subsidy declaration during the leaseholder consultation period that the Applicant didn't originally list.

Applicants should provide any declarations received from leaseholders to Delivery Partners/DLUHC for social sector applicants via upload to the program portal.

We have set out this process in further subsidy control guidance which you can access at <https://www.gov.uk/guidance/remediation-of-non-acm-buildings>

Beneficiaries who provide SPEIs are not subject to a cap on the amount of funding they can benefit from. However, where an SPEI subsidy is 15m SDR or above, then details will need to be provided on the UK's subsidy database. This will be relevant for remediation funding where Registered Providers of Social Housing (RPs), or exceptionally other organisations with a charitable purpose, would be liable for the costs of remedial works by virtue of their service charge obligations⁷.

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?

If building owners, freeholders or the responsible entity would like to discuss further, please contact us at bsf@levellingup.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/>

⁷ Charitable organisations will normally constitute health and/or social and/or educational services and will also usually only be provided with State assistance. Examples may include those as regards health and long-term care, childcare, access to and reintegration into the labour market and the care and social inclusion of vulnerable groups. The leaseholder does not necessarily have to be a charity. However, it is likely to be a 'not for profit' organisation or one focused on services of this kind. Because determining whether a particular service qualifies as a service of this type can be complex, Applicants should consult with their Delivery Partner as soon as possible if they consider that there may be a leaseholder in their building who might qualify.