



Ministry of Housing, Communities & Local Government

GOVERNMENT FUNDS FOR THE REPLACEMENT OF UNSAFE CLADDING ON HIGH-RISE BUILDINGS (BUILDING SAFETY FUND / PRIVATE SECTOR CLADDING REMEDIATION FUND)

Guidance for Leaseholders that are Economic Actors on completing their Subsidy Control Declaration

Introduction

The Government is committed to ensuring that residents are safe and feel safe in their homes. Therefore, the Government has established the Private Sector Cladding Remediation Fund (PSCRF) and the Building Safety Fund (BSF) to remove unsafe Aluminium Composite Material (ACM) and non-ACM cladding systems. Residential buildings 18 metres and over in both the private and social housing sectors can benefit from these funds. Funding will be provided to responsible entities who will be responsible for remediation, but the fund(s) 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 payment in respect of each leaseholder from the Fund will need to comply with subsidy rules.

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) ¹~~(OJ)~~. As these funds do not meet all the principles in the subsidies chapter, economic actors may now receive up to 325,000 Special Drawing Rights, which is approximately £350,000 over a three-year fiscal period, as Small Amounts of Financial Assistance are exempt from the application of the TCA.

For the Government to provide funding for replacing the cladding on your building, the following action is needed:

¹ The Trade and Cooperation Agreement expresses the cap as Special Drawing Rights. The sterling equivalent varies from time to time as any currency exchange rate does

- Each owner of a flat or any commercial occupier must sign and complete a Subsidy Declaration if they fall into the category of 'Economic Actor' – this guidance will help you decide whether you fall into that category or not.
- If you are an Economic Actor you must return the original signed declaration to the responsible entity for your building (the organisation which provided you with the Subsidy Declaration) and keep a copy of your signed declaration for at least three years.
- If you are not an Economic Actor, you do not need to sign and return the declaration.
- The responsible entity for your building must make an application for funding from the Government for the replacement of the unsafe cladding on your building.

An Economic Actor is anybody (including an individual, corporation, a partnership, a family trust, etc.) who either:

- owns and lets out properties to others (for the purposes of the Subsidy Control rules, this counts as operating a business) or
- uses the property in this building solely or primarily for the purposes of operating a business.

An Economic Actor will also include any connected persons. This will include members of group companies and persons having control of corporate entities (including contractual control). If in any doubt about whether a person relates to another for these purposes, please raise the question with the responsible entity.

Leaseholders who are Economic Actors need to sign a declaration because this allows the Government to confirm that payments comply with the requirements of the Subsidy Control provisions, which is a necessary step before any payments can be made. The purpose of the Subsidy Control provisions is to prevent a government from giving an advantage to some businesses in a way that could distort competition.

If an Applicant/Leaseholder has underlet their property on long lease (more than 7 years), the terms pass down on either the whole or part of its service charge obligation. The undertenant is the beneficiary of the financial assistance and the liability to pay the service charge (i.e. to cover the costs) should not be waived.

If you live in the building and do not own and let out any other property in the building, Subsidy Control rules are not relevant as this funding does not constitute a subsidy and you do not need to complete and return the declaration.

If you are an Economic Actor, you should therefore be aware that there is a risk that the Government may not be able to meet all your service charge obligations to pay for replacement of the cladding. However, the fund is designed to maximise the value of the benefit the Government is able to give you.

If you have already paid service charge for these works, then if the application for funding is successful, the responsible entity for your building will be obliged to

reimburse you the service charge you have already paid for the costs of remediation, subject to the limits described above if you are an Economic Actor.

Please review the questions below for further guidance on whether you need to complete the Subsidy Control Declaration and if so, how you should complete it.

If you are an Economic Actor and do not complete and return a declaration, this means that if the responsible entity for your building does carry out this necessary work, it or we may be obliged to recover the costs of doing that work directly from you to the value of the amount you would have paid under your service charge.

Q1. What is Subsidy Control and why are Subsidy Control rules relevant to the replacement of unsafe ACM cladding on my building?

The Trade and Cooperation Agreement completed between the UK and the European Union in December 2020 contain rules constraining the use of financial assistance provided by the State. The purpose of the Subsidy Control rules is to prevent governments from giving financial advantages to businesses in a way which could distort competition. As an example, payments under this fund for the benefit of leaseholders whose properties are run as buy-to-lets could be giving them an advantage compared to other buy-to-let owners who have to pay for repair costs without Government funding.

Q2. For whom might Subsidy Control rules limit the amount of funding that can be provided?

De minimis Subsidy Control rules may limit the amount of funding which can be provided for the benefit of anyone (including an individual, corporation, a partnership, a family trust, etc.) who owns and lets out properties to others, or uses the property in this building principally for the purposes of operating a business. This includes whether the business being operated or letting out of properties is in addition to other business activities or as the only business activity they carry out. The amount the Government can provide in funding for any individual business is limited to approximately £335,000 over three fiscal years. If you are linked to any other businesses (for example you own a controlling interest, or direct that other business), then you will have to take those businesses into account as well for the purpose of determining whether the £335,000 limit has already been met or will be met under this fund.

The Subsidy Control rules will not limit the amount of funding that leaseholders can benefit from where they are an owner-occupier of a single property, even if the leaseholder also runs a business from the same property.

Q3. I am a private individual, is this relevant for me?

If you live in the building and do not own and let out any other property in the building, you are not an Economic Actor (business) for Subsidy Control purposes, and will not be subject to the limits on funding. You do not need to complete the declaration.

Worked Example: Arminster owns Flat 6 Acacia Towers having bought a long lease of a residential property in that building, which is his main residence. He does not own

and let out property in this building or in any other building with unsafe cladding. He will not be subject to the limits on funding which can be provided as part of the Fund, and so he does not need to complete the declaration. The responsible entity for his building can still apply for funding to cover the cost Arminster would otherwise have had to pay for through the service charge.

Q4. How will I know if I have previously received *de minimis* Subsidy?

If you are an Economic Actor, you will have received a formal notification of any previous *de minimis* aid (whether State Aid pre-2021 or Subsidy post 2020) received from the body that granted that aid to you. This will include any payments made under the Private Sector (ACM) Cladding Fund and Building Safety Fund. If you have an accountant or legal adviser, please check with them whether you have received any such notifications. If you have not received any notifications, then it is unlikely you have received any *de minimis* aid (whether State Aid or Subsidy). If you have received any such notifications, then the amount should be set out in the declaration (in Part 2 of the declaration).

Q5. What about the costs of works which do not qualify for funding?

Government intervention is limited to providing funding for the replacement of unsafe Aluminium Composite Material (ACM), and non-Aluminium Composite Material (non-ACM) cladding. If the responsible entity for your building also intends to carry out other works, these will not qualify for Government funding. The costs of these works will not be counted in the Subsidy calculation. The Government has been clear that building owners are responsible for building safety and should protect leaseholders from the costs of remediation.

Q6. What happens if there is more than one leaseholder?

If you let out a flat and you are one of several owners named on the lease, each leaseholder that is an Economic Actor will have a separate Subsidy threshold of up to approximately £335,000.

As you will know, each of the leaseholders of a flat are liable to pay the full-service charge amount. Where a flat has more than one owner, we will apportion on an equal basis the amount of funding provided for the benefit of each individual leaseholder.

We've provided a worked example below.

Worked Example: Jack and Sarah own Flat 1 Acacia Towers and Flat 2 Acacia Towers having bought two long leases of residential property in this building. They have both signed both leases as individuals. Flat 1 is their main residence and Flat 2 they rent out. The following applies:

- In respect of Flat 2 the fact that Jack and Sarah are renting out this property means that they are regarded as a 'business' for Subsidy Control purposes on the funding of Flat 2's works. If neither of them have received any other *de minimis* aid (whether State Aid or Subsidy) in the last 3 years, and they do not own and let out any other flats in buildings covered by this Fund, Jack's Subsidy

Control threshold for Flat 2 will be approximately £335,000 and Sarah's Subsidy Control threshold for Flat 2 will be approximately £335,000. That would mean there is potentially around £700,000 worth of *de minimis* Subsidy allowance available to them.

- Flat 1 is Jack and Sarah's main residence and so the Subsidy Control rules do not apply to the funding of that Flat 1. They do not need to list that property on their Subsidy Control Declaration for Flat 2.
- The cost of the works attributable to Flat 2 are £15,000. The amount of funding provided will be split equally between Jack and Sarah's *de minimis* Subsidy Control allowance.
- If Jack and Sarah had instead formed a company or partnership which signed up to the lease for Flat 2, the cap for Flat 2 would be approximately £335,000, as there was only one leaseholder not two. The Subsidy Control Declaration in respect of Flat 2 would be signed on behalf of the company or partnership.

Q7. What if I rent out more than one flat?

The total amount of lawful Subsidy an Economic Actor can benefit from is approximately £335,000 over 3 fiscal years, no matter how many flats you own and rent out. This means if you own and rent out any one or more flats in the building, or you own and rent out a flat, or flats, in another building with unsafe cladding, the total amount of benefit you could benefit from across all the flats you rent out is approximately £335,000. How much of that £335,000 will be available will also depend on how much (if any) *de minimis* aid (whether State Aid pre-2021 or Subsidy post 2020) you have already been granted within the last 3 years. To check this point, you will be asked to sign a Subsidy Declaration in relation to each of the buildings where you own a flat and rent it out and that may benefit under the Fund.

Worked example: Tom received the equivalent of £70,000 State Aid in other circumstances over the last two financial years. That means he has approximately £265,000 left available of his Subsidy Control threshold. He owns and lets out five flats in Acacia Towers, ten flats in Blackton Towers and six flats in Garden Rise, all of which have unsafe cladding. The value of the benefit for Tom under the funding applications submitted for Acacia Towers and Blackton Towers amount to £100,000. That leaves approximately £165,000 of his Subsidy threshold still available if he needs it in other circumstances. If, on the other hand, the funding applications for Acacia Towers and Blackton Towers was for £400,000, then the funding would be capped at approximately £265,000 and he would have to meet the balance from his own resources.

Q8. Who should sign the declaration?

If you let out your property for financial gain (i.e. you rent it out) or you use the property only or mainly for commercial purposes and you do not also live there, everyone named on the lease of your flat, including you, should be named on the declaration. If so authorised on behalf of the other(s), just one of the co-owners needs to sign the declaration. Alternatively, all co-owners may sign. If you are no longer in contact with any of these individuals or if any of them are no longer alive, then please explain this in the declaration form (at the beginning of the declaration).

Q9. What if I sell my flat whilst the remediation work is being carried out?

You should let your solicitor or conveyancer know and provide them with a copy of this guidance² and a copy of the letter we or the responsible entity will send you setting out how much Subsidy you will have benefitted from (if there is more than one leaseholder, then a copy of the letter for each of you). Please also let the responsible entity for your building know as soon as possible and provide them with details of your buyer (or buyers).

Q10. What if it turns out that I have been paid unlawful Subsidy?

If you have been paid unlawful Subsidy, we may be obliged to recoup from you some or all the funds you have benefitted from under the Fund, together with interest. The Fund is designed to try and limit this risk, and therefore, if you are an Economic Actor, you should sign and return the declaration to the responsible entity for your building.

Q11. How will applications to the Fund work?

The responsible entity for your building is responsible for works on your building and will therefore be making an application for funding and managing the works. However, the funding is being provided for the benefit of leaseholders, who would otherwise ordinarily be required to pay for the works via the service charge as per the provisions in their lease. Leaseholders will not directly receive any funding (unless they have already paid for works), as the benefit they receive is the service charge which they would otherwise have had to pay. If you have already paid service charge for these works, then if the application for funding is successful, the responsible entity for your building will be obliged to reimburse you some or all of the service charge you have already paid.

Q12. Does the subsidy threshold include Covid Self Employment Grants received this past year?

Covid Self Employment Grants do constitute a subsidy. However, such aid (when given prior to the end of 2020) was permitted under the Commission's Temporary Framework. The Temporary Framework allowed aid granted under it to be "cumulated" with (i.e. be given in addition to) de minimis aid provided it was not being granted for the same eligible costs. Therefore, receipt of such grant prior to 1 January 2021 does not have to be disclosed on any Subsidy Declaration.

Other examples of support provided under the Temporary Framework include:

- payments under the Small Business Grant Fund where the beneficiary had no further de minimis capacity
- Business Grant Allowance and Special Allowance
- payments under the Retail, Leisure and Hospitality Grant Fund
- the Coronavirus Business Interruption Loan Scheme for SMEs
- Coronavirus Large Business Interruption Loan Scheme
- Covid-18 Corporate Banking Facility
- Covid-19 Corporate Financing Facility

² If you need a further copy, it can be found at <https://www.gov.uk/guidance/remediation-of-non-acm-buildings#state-aid-guidance-and-declaration>

- bounce back loans for SMEs
- Discretionary Grants Fund Scheme where beyond the de minimis cap
- reclaim of statutory sick pay
- deferred VAT payments
- deferred Class 2 National Insurance Payments

In relation to support received after 1 January 2021, however, any entitlement to Covid Self Employment Grant does not benefit from the same position. These awards are granted based on Small Amounts of Assistance and count towards the 325k SDR limit under the TCA including any *de minimis* state subsidy granted over this, and the previous two fiscal years. Receipt of such Grant should be disclosed on any Subsidy Declaration.

Technical guidance on this issue has been published by the Department for Business, Energy, and Industrial Strategy (BEIS) and can be found at <https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities/technical-guidance-on-the-uks-international-subsidy-control-commitments>.

Q13. Does the term ‘Economic Actor’ include other businesses?

Yes, an ‘economic actor’ can also include other businesses. Where this is applicable to a leaseholder, any financial assistance from the State in the current or previous two fiscal years in the form of State aid or subsidy must be disclosed on a Subsidy Declaration. This will arise where there is "an entity or a group of entities constituting a single economic entity, regardless of its legal status, that is engaged in an economic activity by offering goods or services on a market".

A good indicator of "a single economic entity" is where the relevant bodies are covered by group accounts. However, linked entities also exist where one entity controls most voting rights of another entity either directly or indirectly; or can exercise dominant influence over another entity. A typical example is a wholly owned subsidiary.

Entities are also linked when one entity can appoint or remove a majority of the other entity's administrative, management or supervisory body; or there is a contract between each entity enabling one to exercise a dominant influence over the other including where one entity can exercise sole control over a majority of shareholders' or members' voting rights in another entity.

An entity can also be linked to another entity where it exercises the sorts of control described above through a third party.

Q13. How can I find out more information about the Fund?

If you have any questions about filling in this declaration, please first contact the responsible entity for your building, who will pass on your query to MHCLG's Delivery Partners if they are unable to answer it.

If you would like to understand more about the works planned for your building, please contact the responsible entity for your building.

If you would like to find out more about the Fund in general, please see here:
<https://www.gov.uk/guidance/remediation-of-non-acm-buildings>

You can access specialist advice for help to understand your rights through the Leasehold Advisory Service (LEASE). The Government has allocated additional funding to LEASE to provide independent, free, initial advice to leaseholders on building safety issues to ensure they are aware of their rights and are supported to understand the terms of their leases. More information on LEASE, including how to contact them for advice, is available here: <https://www.lease-advice.org/>