



Ministry of Housing,
Communities &
Local Government

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Dear Clive,

BAN ON THE USE OF COMBUSTIBLE MATERIALS IN THE EXTERNAL WALLS OF HIGH RISE RESIDENTIAL BUILDINGS

Thank you for your letter of 10 December on this subject.

I am grateful for the Committee's support for the publication of the regulations implementing the ban. I set out below responses to the particular points raised in your letter.

Scope of the ban

In deciding on the scope of the ban, the Government has carefully considered understandable public concern alongside expert advice and concluded that the ban should be applied to those buildings where external fire spread presents a greater risk. The existing functional requirements in Part B of Schedule 1 of the Building Regulations will of course continue to apply to all buildings. For those high rise buildings not covered by the ban, the existing provisions in the Approved Document B guidance for insulation products, filler material etc to be of limited combustibility or for the whole wall system to pass a BS 8414 test continue to apply. The provisions of the Fire Safety Order will also apply. It would therefore be wrong to consider that no measures exist for the protection of people in buildings outside the scope of the ban.

We will be keeping the regulations under review and we have identified in particular the issue of height thresholds to be considered in the technical review of Approved Document B, for which we issued a call for evidence on 18 December.

In relation to existing buildings, Building Regulations apply when building work is being undertaken. So the ban will apply, for example, when a material alteration is made to a building - which would include where an external wall system is being renovated - but the ban cannot be applied where no work is being undertaken. We expect building owners to assess fire safety risks and take appropriate action.

We agree with Dame Judith Hackitt that developers and building owners of higher risk residential buildings (HRRBs) need to adopt a safety case mindset. We agree with the principle of Dame Judith's recommendation for the dutyholder of HRRBs to proactively demonstrate through a safety case at regular intervals that hazards and risks are identified, and that appropriate mitigation measures are in place, and we will consult in the spring on details of how this might be implemented.

It is important to note also that the requirements in the guidance that, for buildings over 18 metres, insulation products, filler material etc should be of limited combustibility, or (since 2006) for the whole wall system to pass a BS 8414 test, will have been applied at the time of the building's construction or renovation work affecting the wall system. Although we have introduced the ban to provide absolute clarity on what is or is not allowed in future, we remain of the view, advised by the Independent Expert Advisory Panel, that the BS 8414 test is robust and that wall systems which have passed the test are safe.

Approved Document B

Our consultation on the clarified version of Approved Document B closed on 11th October. We have received around 1350 detailed comments on the draft which the Department is analysing with the help of the Building Regulations Advisory Committee. We plan to publish the revised, clarified AD B in the early spring. I am sure you will agree that it is important that we get the detail right.

The changes to AD B which were published with the regulations implementing the ban those needed to explain the operation of the ban, rather than wider changes. As part of the clarification exercise we are reviewing the guidance in section 12 of AD B which will apply to buildings not covered by the ban. The Department has also been working on a set of frequently asked questions about the ban and associated issues which will support the AD guidance.

Non-ACM materials

We do not have comprehensive information on the external wall systems of high rise buildings with non-ACM cladding as we have been concentrating our efforts on ensuring that we have robust information on those buildings with ACM cladding. We have seen the Rockwool analysis to which you refer and my officials will meet Rockwool to discuss the basis of their analysis.

My Department has been consistently clear that building owners are responsible for ensuring the safety of all buildings, irrespective of whether the cladding consists of ACM or other materials. In consultation with the Independent Expert Advisory Panel (IEAP), we issued advice about non-ACM cladding and insulation systems in December 2017.

Following recent concerns raised about the use of non-ACM cladding I asked the IEAP to review this advice. They have now done so and the Department issued revised advice to building owners on 18 December 2018. The updated advice reinforces that the clearest way to ensure safety is to remove unsafe materials.

As I have set out above, the combustible cladding ban will only apply where building work is being undertaken. However, any new buildings with non-ACM cladding systems would not be allowed to use materials which did not meet the threshold standard set out in the regulations.

Local Authority enforcement powers

You asked about enforcement powers for local authorities. The Housing Act 2004 and the Housing Health & Safety Rating System (HHSRS) Regulations provide powers to local authorities to identify, assess and take enforcement action against owners of residential buildings in their area where those owners are not acting responsibly regarding hazards, including unsafe cladding systems. We have published specific new statutory guidance under the Act to help local authorities provide evidence when assessing high-rise residential buildings with unsafe cladding, with a view to taking enforcement action.

The HHSRS assessment will determine what category of risk a hazard poses. Where a risk is deemed to be a Category 1 a local authority has a duty to take enforcement action. Where a risk is deemed to be a Category 2 an authority has the discretionary power to take action, and it is for the local authority to make the judgement as to the necessity for intervention.

Where, as part of the enforcement action, the local authority takes emergency action themselves to remediate a building then the Act allows local authorities to recover reasonably incurred expenses, with interest. As I set out in my written statement of 29 November, the Government is committed to supporting local authorities to ensure that private-sector high-rise residential buildings with unsafe ACM cladding in their areas are remediated, including financial support to take emergency remedial action if that is necessary. Local authorities finding themselves in this position should approach my department to discuss what support may be needed.

Costs of remedial work

Where ACM cladding does not meet the limited combustibility requirements of the Building Regulations guidance that was in place before the combustible materials ban it is correct that the cost of remedial work should fall on the building owner. As outlined above the Independent Expert Advisory Panel has provided revised advice on other non-ACM cladding.

The Government is now providing funding so that local authorities and housing associations can focus their efforts on making their buildings safe without impacting negatively on other services, improvements to housing quality or new supply. We have committed to fully funding the removal and replacement of dangerous ACM cladding on residential social housing buildings over 18m owned by councils and housing associations, with costs estimated at £400 million. We have so far allocated £248 million to replace cladding on 135 buildings. We will still accept applications from building owners who require funding.

Leaseholders

Finally, I share the view of the Committee that building owners should not pass on the costs of removing cladding to their leaseholders. I have made it clear that we expect building owners in the private sector to protect leaseholders from remediation costs, either funding it themselves or looking at alternative routes such as insurance claims, warranties or legal action. A growing list of organisations, such as Barratt Developments, Mace and Legal & General, are doing the right thing and taking responsibility for funding remediation.

This is in addition to the National House Building Council accepting a claim from Galliard Homes in relation to the New Capital Quay development in Greenwich. We have not ruled out any options to ensure building owners and developers protect leaseholders from these costs.

I hope that this is helpful.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'James Brokenshire', written in a cursive style.

RT HON JAMES BROKESHIRE MP