

"DON'T BE CLAD IN CONFUSION"

- Over the years, Scotland and England have taken different approaches to the approval of the external façade (including cladding) materials for residential properties. Those differences continue and it is more important than ever that developers and property owners understand the differences.
- A concise summary of the key differences for residential properties in the two jurisdictions as at July 2020 and points to consider is set out below
- This article does not consider the position in relation to commercial properties, for which different standards apply.

Scotland		England
What is the relevant legislation?	<p>The Building (Scotland) Regulations 2004</p> <p>Building standards technical handbook 2019: domestic buildings</p>	<p>The Building Regulations 2010</p> <p>The Building (Amendments) Regulations 2018</p> <p>Approved Document B (fire safety) Volume 2: buildings other than dwellings</p>
Is the installation of combustible material as part of the façade system banned on residential buildings of more than 18 metres in height?	<p>NO</p> <p>Combustible materials may still be specified as part of the façade system on residential buildings in Scotland of over 11m in height where the cladding system has been installed in accordance with the Building Regulations.</p>	<p>YES</p> <p>Combustible materials as part of the façade system are banned from use on certain buildings of more than 18m in height.</p>

Scotland		England
What is the general position in relation to cladding of high rise residential properties?	<p>The technical handbook states that insulation and cladding products (together known as the façade system) on the outside of a residential building of more than 11m in height should either be:</p> <ul style="list-style-type: none"> • Non-combustible Euroclass A1 (no contribution to a fire) or A2 (no significant contribution to fire growth); OR • (If the system includes combustible materials) the façade system should undergo a BS 8414 test in conjunction with BR 135. 	<p>England used to follow similar rules to Scotland until December 2018 when the use of combustible materials for façade systems was banned for new buildings of more than 18m in height.</p> <p>Where existing buildings require remedial works, it is recommended to use a BR 135 fire test to prove compliance with the functional requirements of Building Regulations (current at the time of construction) for the retained materials. Newly installed materials must comply with The Building (Amendments) Regulations 2018 (i.e. be non-combustible).</p>
What action is being taken at a national level to assess the relevant regulatory frameworks?	<p>In 2017 a Ministerial Working Group was convened to oversee a review of the building and fire safety regulatory frameworks in Scotland. The initial focus of the group was on high rise domestic buildings.</p> <p>A Review Panel on Building Standards (Fire Safety) in Scotland was subsequently formed which provided a report on 29 June 2018.</p> <p>The Panel made a number of recommendations including:</p> <ul style="list-style-type: none"> • Any building with a storey at over 11m above the ground should require A2 or better; • BS8414 (and BR135) would remain as an alternative method of providing evidence to show compliance. <p>The Scottish Government provided a general update on 23 October 2018 stating that all 32 local authorities had reported that no local authority or social high rise domestic properties in Scotland had been <i>extensively</i> clad in ACM cladding.</p> <p>It was further advised that all local authorities had completed checks on private sector properties and 31 local authorities had advised that no privately owned high rise domestic properties have ACM in their cladding system.</p> <p>The Scottish Government have advised that it is the responsibility of local authorities or the property owner to determine the appropriate course of</p>	<p><u>Consultation on the Ban on Combustible Materials</u></p> <p>On 20 January 2020, the MHCLG launched a consultation on proposals to widen the scope of the current ban in England – specifically:</p> <ul style="list-style-type: none"> • extending the ban to include hotels, hostels and boarding houses; • lowering the height threshold to 11m; and • banning the use of metal composite materials with a polyethylene core in and on external walls and in specified attachments in all buildings, regardless of height, purpose or use. <p><u>Building A Safer Future – implementation plan</u></p> <ul style="list-style-type: none"> • Fire Safety Bill - if passed into law, the Fire Safety Bill would remove uncertainty around the application of the Regulatory Reform (Fire Safety) Order 2005 where a building contains two or more sets of domestic premises. The Bill is now due to have its report stage and third reading on a date to be announced. Further information about the progress can be found here. • Building Safety Bill - the Bill would put in place new and enhanced regulatory regimes for building safety and construction products and ensure residents have a stronger voice in the system. The Bill is brought forward to improve building and fire safety and ensure that people are and feel safer in their homes. Main changes which should be noted are:

Scotland	England								
	<p>action in consultation with the Scottish Fire and Rescue Service if ACM panels are found.</p> <p>At present there are no statutory consultations or proposals to introduce a similar fund for the removal of either ACM or non-ACM cladding materials in Scotland.</p> <p>See our detailed article on the Building A Safer Future response also in this edition here</p> <ul style="list-style-type: none"> ○ introduction of a new Building Safety Regulator, who will be responsible for implementation and enforcement of the new regime for higher-risk buildings; ○ implementation of a new regime of duty-holders, who will have clear responsibilities at each stage of the building lifecycle, including during design and construction, during occupation, across the lifecycle of the building and during any refurbishment; ○ requirement to appoint a building safety manager accountable for higher-risk buildings before the building becomes occupied; ○ introduction of new increased sanctions; and ○ introduction of a New Homes Ombudsman, who will have powers to investigate and determine complaints made by the new homes owners and occupiers in relation to building and fire safety. <p>The draft Bill has now been published and can be accessed here.</p> <ul style="list-style-type: none"> ● Further amendments to Approved Document B - which reduce the trigger height for sprinklers from 30m to 11m and set out a new recommendation for floor identification and flat indication signage within blocks of flats with storeys over 11m. These changes come into force on 26 November 2020. <p><u>Summary of Upcoming Changes</u></p> <table border="1"> <thead> <tr> <th>What</th><th>When</th></tr> </thead> <tbody> <tr> <td>Fire Safety Bill: Public Bill Committee to report on Fire Safety Bill 2019-21</td><td>The Bill is to have report stage and third reading on a date to be announced.</td></tr> <tr> <td>Approved Document B amendments (sprinklers/signage)</td><td>26 November 2020</td></tr> <tr> <td>Combustible cladding ban: Outcome of consultation on changes to the</td><td>Closed on 25 May 2020 – outcome awaited</td></tr> </tbody> </table>	What	When	Fire Safety Bill: Public Bill Committee to report on Fire Safety Bill 2019-21	The Bill is to have report stage and third reading on a date to be announced.	Approved Document B amendments (sprinklers/signage)	26 November 2020	Combustible cladding ban: Outcome of consultation on changes to the	Closed on 25 May 2020 – outcome awaited
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		combustible cladding ban, including lowering the height threshold	
		Approved Document B (Technical review): Technical review of Approved Document B	TBC
		Building Safety Bill: Introduction of Building Safety Bill to Parliament	Draft Bill was published on 20 July 2020 for it to receive views from parliamentarians, residents and the industry before it is introduced to Parliament.
		PI insurance: Review into availability of professional indemnity insurance for construction professionals	TBC
Now what?	<p>Clients in England are advised to review the Registration Prospectus for the Building Safety Fund for the remediation of non-ACM Cladding Systems and register as soon as possible and in any event before the deadline of 31 July 2020.</p> <p>Clients are also advised to seek independent advice if they have ongoing concerns surrounding the safety of a cladding system or are exploring remedial works.</p> <p>Our team are ready to advise, for further information please see here.</p>		

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