

**PARTIAL BUSINESS AND REGULATORY IMPACT**

**ASSESSMENT**

**AMENDMENT TO THE BUILDING REGULATIONS AND BUILDING STANDARDS TECHNICAL HANDBOOK GUIDANCE - SECTION 2: FIRE**

**BUILDING STANDARDS DIVISION**

**July 2021**

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**Partial Business and Regulatory Impact Assessment**

# TITLE OF PROPOSAL

# Amendment to the Building Regulations and Building Standards Technical Handbook guidance - Section 2: Fire

# PURPOSE AND INTENDED EFFECT

## Background

Following the tragic events at Grenfell Tower, London in June 2017 a Ministerial Working Group (MWG) was set up to oversee a review of building and fire regulatory frameworks and any other relevant matters, to help ensure that people are safe in Scotland's buildings, and make any recommendations for improvement as required. One piece of work identified by the MWG was a need for a review of specific aspects of the Scottish building regulations applicable to high rise domestic buildings.

In 2018, the [Building Standards (Fire Safety) Review Panel](https://www.gov.scot/publications/building-standards-fire-safety-review-panel-minutes-index/) recommended to Ministers that the building regulations relating to external fire spread (Standard 2.7) did not require to be amended, but it did recommend that the supporting guidance in the technical handbooks could be strengthened. The key changes in relation to cladding introduced on 1 October 2019 included:

* Lowering the height at which combustible cladding can be used from 18 metres to 11 metres to align with fire-fighting from the ground;
* Tighter controls over the combustibility of cladding systems on hospitals, residential care buildings, entertainment and assembly buildings regardless of building height.

Kevin Stewart, Minister for Local Government, Housing and Planning announced at the Local Government and Communities Committee meeting on 4 September 2020 that a panel of fire experts would be convened to consider a ban on the highest risk cladding materials through building regulations and to review the role of the large scale test, BS 8414 in supporting guidance..

The Fire Safety Review Panel, was subsequently set up with remit to consider:

* a ban on the highest risk cladding materials including Metal Composite Material (MCM) cladding panels; and
* the ongoing role of BS 8414 in supporting guidance.

The Panel comprises representation from academia, industry experts, professional institutions, local authority building standards, fire testing, research and consultancy, Scottish Fire and Rescue Service, the National Health Service and officials from the Scottish Government. The UK Government, Welsh Government, Northern Ireland Executive and the Government of Ireland attend as observers. The expert review group have met on three occasions. Public consultation will take place over the summer of 2021 and proposals will be finalised later in the year.

Scottish building regulations set national mandatory building standards for the health, safety, welfare and convenience of persons in and around buildings, furthering the conservation of fuel and power and furthering the achievement of sustainable development. These building standards are supported by guidance contained in the building standards Technical Handbooks. The building regulations apply to new buildings and to buildings being converted, altered or extended. Scottish building regulations are devolved to the Scottish Parliament, therefore there is no alternative framework in place which deals with Scottish building regulations and mandatory building standards.

Building standards are expressed in functional terms and do not dictate the methods that should be used to achieve the requirements. The choice of how to comply with the standards lies with building owners and for this purpose Scottish Ministers issue Technical Handbooks containing practical guidance on how the requirements of the building standards may be met. The guidance may be relied upon in any proceedings as tending to negative liability for an alleged contravention of the building regulations. This does not, however, preclude the use of alternative approaches provided the designer can satisfy the local authority verifier that the requirements of the building standards will be fulfilled in the completed building.

## Objective

Buildings have significant implications for health, safety, the environment and our communities. Through the appropriate application of minimum building standards, set by regulations, the design and construction of Scotland’s built environment can benefit all owners, user and people in and around our buildings.

This Business and Regulatory Impact Assessment (BRIA) forms part of a building regulations review, specifically amendments to building standard 2.7 and the supporting guidance within both Domestic and Non-Domestic Building Standards Technical Handbooks (TH).

The principle aims and objectives of the proposals support the Government’s strategic objectives of a healthier and safer Scotland. This is done through the principles of better regulation by:

* Banning the highest risk Metal Composite Material (MCM) cladding panels;
* amending building standard 2.7 relating to the spread of fire on external walls;
* four options have been developed to further strengthen the guidance relating to the combustibility of external wall cladding including the role of British Standard 8414 (and BR135) for large scale fire testing.

## Rationale for Government intervention

### Introduction

The Scottish Government has set out an ambitious programme of work in ‘Protecting Scotland, Renewing Scotland: the Government's programme for Scotland 2020-2021’.

The Government has already implemented actions recommended by the [Ministerial Working Group](https://www.gov.scot/groups/ministerial-working-group-building-and-fire-safety/) established following the tragic fire at Grenfell Tower in London.

This review will further strengthen and enhance key aspects of the Scottish Building Standards system including implementing a ban on the highest risk cladding and tighter restrictions on the use of all other combustible cladding.

### Grenfell Tower Fire, 14 June 2017

The tragic fire that occurred in the early hours of 14 June at Grenfell Tower in North Kensington, London killing 72 people has provided the driver for Government intervention. Although a police investigation and public inquiry have still to be concluded and all their findings released, amongst matters being considered are if the cladding fitted in a recent refurbishment of the building did not comply with provisions set out on means of complying with English building regulations.

This review, therefore, considers the fitness of building standards and associated Technical Handbook guidance in relation to cladding on all building types and is not limited to domestic high rise buildings

The various threads of the work stream tie into the objectives of the National

Performance Framework, in particular that people in Scotland live in

“communities that are inclusive, empowered, resilient and safe”. There is a need to ensure that not only do people feel safe in their homes and places of work or entertainment but they actually are as safe as possible from the risk of fire. The revisions will reduce the risk of fire and, where a fire does occur, there are measures in place to restrict the growth of fire and smoke to enable the occupants to escape safely and fire fighters to deal with fire safety and effectively.

### Building Standard 2.7

The expert Review Panel were of the view to consult on the following changes to the wording of mandatory standard 2.7 (shown in bold text below) which clarifies the intent of the standard.

*“Every building must be designed and constructed in such a way that in the event of an outbreak of fire within the building, or from an external source, the spread of fire on the external walls of the building****~~is inhibited~~****,* ***and does not unduly promote fire spread taking into account the height and use of the building.”***

### Technical Handbook guidance

Additionally, as identified in 2.1 (background), mandatory standards are supported by guidance contained in the Technical Handbooks (TH). Following the guidance is the most common route to compliance which tends towards negative liability. Changing the guidance will therefore have a significant impact. The rationale for Government intervention in respect of each topic is identified below.

* **Technical Handbook guidance supporting Building Standard 2.7.**

**Combustibility of External Wall Cladding Systems**

The consultation and subsequent autumn review panel meeting will determine if the alternative means of compliance by evidencing that an external wall cladding system has been the subject of a full scale test meeting BS 8414 Parts 1 or 2, subject to a BR 135 report, is considered fit for continued use and referenced in the Technical Handbooks.

Note, the provisions for compliance are to all buildings with a storey at a height greater than 11 m above ground and to both hospitals & residential care buildings and in entertainment and assembly buildings of any height. The 11m storey height is based on the reach capability of a fire and rescue service ground mounted water jet where there is sufficient pressure and flow in the water main.

* **Technical Handbook guidance –the use of fire engineering**

The Technical Handbooks contain guidance on one or sometimes more than one means of complying with the requirements of the mandatory building standards. Alternative means of showing that compliance with any or all applicable building standards may be adopted by the building warrant applicant or their duly authorised agent. It is for the applicant or their agent to evidence to the verifier that the requirements of the standard(s) will be met by the alternative method.

Although most practitioners are aware that the TH contain guidance, in practice the guidance is viewed as “the requirements” by all parties involved. This approach can and does lead to misunderstandings and unnecessary delays in the approval of building warrants when an alternative route to compliance is followed. Although this is true of all sections of the TH it is particularly true in respect of Section 2: Fire.

It is intended to consult on fire engineering designs in relation to cladding and building types and heights and specifically if this is considered a viable approach to safe design. Outcomes will be considered by the review panel in Autumn and building regulations and/or mandatory standards and TH supporting guidance will be updated accordingly following decisions.

# CONSULTATION

## Within Government

The target areas contained in the consultation proposals were examined and developed by the expert review panel. Considering the focus of the review is on external wall systems and technically complex, there was no need to consult other policy areas within Government during the development of drafting technical proposals. The following directorates were kept informed of review progress and will be given the opportunity to comment during the consultation phase:

* Directorate for Safer Communities – Fire and Rescue Unit; and
* Directorate for Housing and Social Justice – Better Homes Division and More Homes Division.

## Public Consultation

A consultationwill be opened on 16 July 2021 and will close on 08 October

2021. The full consultation package will be published in different accessible formats on the Scottish Government website. The consultation will cover five main areas:

* + the wording of mandatory standard 2.7 Spread on external walls;
	+ consideration of a definition and ban on the highest risk Metal Composite Material (MCM) cladding panels;
	+ consideration of options to improving standards and guidance on cladding systems, including the continued role of large scale fire test BS 8414;
	+ consequential matters – exemptions for certain penetrations and openings; and
	+ impact assessments.

This consultation will seek views and opinions on options together with comments on draft standards or guidance developed in conjunction with the review panel.

Building Standards Division will also consult with groups that can represent the views and confirm whether there are likely to be any impacts on vulnerable groups e.g. housing associations, poverty alliance, shelter, members of the Tenants and Residents Association etc.

This partial BRIA will be updated with the public consultation results, any related and subsequent developments to the proposal and any impact on the decision being taken from these results.

## Business

The main public consultation will be used to engage with businesses that have a potential to be impacted by the proposals including the Federation of Small Businesses. Expected participants of the consultation will be wide ranging with the awareness of the following groups being promoted through participation of representatives on the Fire Safety Review Panel 2021 from academia, professional institutions architectural practices, house builders, fire engineering practices, building contractors, product manufacturers, local authority building standards, fire testing, research and consultancy, National Health Service and the Scottish Fire and Rescue Service. The following consultation question will form the main part of the Scottish Firms Impact Test;

*“To help us determine the impact of the policies proposed in the consultation, we are interested to find out if these proposals would lead to increased costs and/or impact on resources for you or your business (if applicable).*

*Any comments received will be used to inform the final BRIA which would be prepared in support of any new or amended building regulations.*

***Question 5.2:*** *Do you think that any of the proposals in this consultation have any financial, regulatory or resource implications for you and/or your business (if applicable)? Choose from the following options:*

*Yes ☐ No ☐ Unsure ☐*

*Please select only one answer and provide any comments in the boxes below. If selecting yes, please specify which of the proposals you refer to and why you believe financial, regulatory or resource implications will be impacted.”*

# OPTIONS

In considering how best to address the range of objectives identified in clause 2.2 above, two possible options were identified:

* Option 1 – do nothing;
* Option 2 – amend standard 2.7 and / or relevant regulations and guidance contained in the Technical Handbooks

## Sectors and groups affected

Sectors and groups affected include:

* Building users – people living in or using the building should benefit from a safer building environment arising from proposed changes and not be subject to loss of amenity and facilities as a consequence of the take up of the revised and improved technical guidance;
* Building designers/constructors – All those involved with building design and construction would have to familiarise themselves with the new /amended standards and guidance through training, etc.
* Building procurement – Persons or companies procuring new buildings or building work may incur additional costs. This will be explored further during the consultation exercise with a specific question (5.2) relating to impacts on business.
* Verification – Local authority verifiers would have to train staff in relevant areas of the building standards and associated guidance where the scope has been extended or revised.
* Product manufacturers – Companies manufacturing or supplying materials would require to ensure their products comply with relevant Standards. It is anticipated that financial impacts will be informed during the consultation exercise with a specific question (5.2) relating to financial or resource impacts on business.

## Benefits

All of the topics involved in the review relate to changes or clarification to the existing mandatory standards and supporting guidance. Therefore it is likely that a single option would be appropriate for all subjects. When assessing the effectiveness of the two options to achieve the desired outcomes indicated in paragraph 2.3, the following observations are made:

### Option 1 – Do nothing

This option offers no benefits. There would be no improvement or other gained to building regulations. No improvements would be developed for constructed building to ensure the safety of the building’s occupants in the event of a fire. This option does not address any of the issues of concern identified. It which would not improve safety in affected buildings and may lead to criticism of government policy on fire safety or residents in the post Grenfell era. No implementation and delivery plan required as there is no change and therefore no delivery.

### Option 2 – Amend Mandatory Standards/regulations and supporting Technical Handbook (TH) guidance

The principal benefit of option 2 is that, by amendment to existing mandatory standards/regulations and supporting guidance, all the measures will be applied through the existing or amended building standards/regulations, applied by building owners and developers through the building warrant process and monitoring and enforced by local authorities.

**Amending Standard 2.7 and TH guidance by:**

* Clarifying the intent of the mandatory standard 2.7 Spread on External Walls;
* Reducing the permissible combustibility of external wall cladding systems to high rise buildings and entertainment and assembly buildings, residential care buildings and hospital buildings of any height will:
	+ Reduce the possibility of rapid spread of fire on the external façade of a high rise building or defined high risk lower rise building.
	+ Provide enhanced safety to firefighters tackling a fire on an external façade.
	+ Reduce the possibility of fire spread on an external façade re-entering a building and affecting occupants or users in other compartments or separate spaces or affect the escape routes in, for example, an assembly building.

## Costs

Costs will be fully reviewed and completed when policy options are decided post public consultation and the next autumn Fire Safety Review Panel meeting. The current cost implications are understood as indicated in this section but will be ratified or amended once the direction of policies are known.

**Ban on MCM (category 3)** - The Metal Cladding and Roofing Manufacturers Association (MCRMA) position statement is for the non-use of highest risk MCM cladding materials and therefore the proposed ban on this material classification will have zero impact since industry has itself, effectively banned its use in buildings.

**Technical Handbook guidance –** Options 1,2, 3 and 4 from the consultation questionnaire are currently unknowns and this will require to be established when policy direction is clearer and any possible cost implications calculated.

**Amended to standard 2.7 –** no cost complications with increased clarity.

### Option 1 – Do nothing

Stakeholders would not have the additional robustness of increased fire safety in buildings. There would be no additional costs of compliance and likely to be unacceptable following recommendations of the expert review panel and any additional recommendations from the Grenfell Inquiry. There is the potential for reputational damage to Government for inaction to raise fire safety standards for cladding.

### Option 2 – Amend Standards/Regulations and Technical Handbook guidance

* **Amended standards/regulations provision to address performance of external cladding systems.**

Reducing the permissible combustibility of external wall cladding systems to high rise buildings and entertainment and assembly buildings, residential care buildings and hospital buildings of any height will:

* + Potentially increase costs for projects where combustible cladding products were previously acceptable. However, this is impossible to quantify due to the vast number of alternative solutions that may be adopted, some of which may actually result in reduced costs.
	+ Potentially increase costs for projects where cladding products assessed under the BS 8414 suite of standards relating to fire performance of external cladding systems test methodology were previously acceptable. Again, this is impossible to quantify.
	+ Potentially increase costs for manufacturers of products previously assessed under the BS 8414 suite of standards relating to fire performance of external cladding systems test methodology. It is difficult to determine costs to industry directly related to this initiative as manufactures are constantly upgrading and updating their product range.
	+ Reduce the potential for fire spread on façades of higher risk buildings and, therefore, reduce potential cost to society of injury and death to occupants and firefighters. In addition, the cost of firefighting operations will be reduced, along with environmental costs, both locally due to, for example, firefighting water wash off and globally due to products of the combustion process, for example carbon monoxide, entering the atmosphere.
	+ By containing the spread of fire on the façade, reduce the number of occupants requiring decanting and therefore limiting the cost, due to fire damage remedial work.

# SCOTTISH FIRMS IMPACT TEST

No current actions undertaken re: face to face meetings. impacts will be informed from the consultation exercise with a specific question (5.2) relating to impacts on business. Face to face meetings with firms will be carried out during the consultation phase.

# COMPETITION ASSESSMENT

As the changes will form part of national building regulations they will be implemented uniformly throughout the country. It is not envisaged that any of the aspects identified in clauses 2.3.3 and 2.3.4 of this assessment will impact on competition between companies.

Having reviewed the four competition questions provided within the Competition and Market Authority guidelines for policy makers on competition assessment, we are satisfied that the changes to the building standard and Technical Handbook guidance will not impact on competition within the market place. There is effectively a current industry ban on MCM Category 3 panels.

This will be further informed from the consultation exercise with a specific question (5.2) relating to impacts on business

# CONSUMER ASSESSMENT

Certain aspects of the proposals may have an adverse impact on consumers as they may result in increased build costs, which the developer will, in all likelihood, pass some or all on to the purchaser or tenant/leaser of the building.

With regard to dwellings, the actual amount ofadditional costs is dependent on many factors, such as the specification of products used and the number of units in the building. Economies of scale would also have a part to play in determining additional costs per unit. Assuming six flats per storey, each with a floor area of 80 m2 and additional costs were divided equally across all flats, the approximate costings would be:

* c. £500 per flat for non-combustible cladding systems in buildings with a storey height over 11 m above ground level. This is based on A2 MCM as opposed to PE MCM, however, costs will vary considerably depending on what cladding was desired and there may be a zero cost impact in a more prestigious building;

It is not so straight-forward to determine increased costs for non-domestic buildings as the size, height, floor area and footprint all vary significantly. However, installing cladding systems with A2 MCM as opposed to PE MCM would add in the region of £10 – 15 / m2 to the build costs. As with domestic buildings, there may be no cost impact if the desired cladding material achieves an A1 or A2 European classification.

# TEST RUN OF BUSINESS FORMS

No new forms will be introduced as a result of this policy.

# DIGITAL IMPACT TEST

The building standards system in Scotland is a functional based system. That is to say that there are high level building standards that must be met, with Technical Handbooks supporting these standards with guidance on one or more ways of achieving compliance with the standards. However, there is no requirement to follow the guidance in the Technical Handbooks and alternative means of complying may be adopted by the building warrant applicant or their duly authorised agent.

It is not considered that there will be any intended or unintended consequences from technological advances.

# LEGAL AID IMPACT TEST

It is not envisaged that there will be any greater demands placed on the legal system by this proposal. Accordingly, it is not considered that there will be any effect on individuals’ rights of access to justice through availability of legal aid or possible expenditure from the legal aid fund.

# ENFORCEMENT, SANCTIONS AND MONITORING

The changes will form part of an amendment(s) to the Building (Scotland) Regulations 2004 and the supporting Scottish Building Standards Technical Handbooks (TH).

All matters relating to enforcement, sanctions and monitoring will be carried out under the existing processes that form part of the building standards system in Scotland, as set out under the Building (Scotland) Act 2003 (the Act). Parties responsible for operation of this system are the 32 Scottish local authorities, appointed as verifiers under the Act and the Building Standards Division of the Scottish Government.

Generally, work subject to the Building (Scotland) Regulations 2004 requires to be the subject of a building warrant before work commences and to have a completion certificate accepted once works are complete. Exclusions are set out under Schedule 3 to Regulations 5 of the Building (Scotland) Regulations 2004.

Where a building warrant is required, proposals are subject to the scrutiny of verifiers who have enforcement powers under the Act to ensure compliance with the Building (Scotland) Regulations 2004.

# IMPLEMENTATION AND DELIVERY PLAN

## Dissemination

In general, it is anticipated that the changes will be “absorbed” as part of the overall Building Standards system. This will involve written notifications to local authority verifier, posts on the Scottish Government Building Standards website and social media to highlight the changes. Dissemination events will also be organised by the Building Standards Division (BSD).

## Post-implementation review

Review will be carried out by the BSD considering the implementation of the change made to building standards legislation (amendment of building standard 2.7 and potentially, Regulation 7) and supporting Technical Handbook guidance. This review will monitor the effectiveness of the changes and ensure that subsequent reviews can be made on an informed basis. This will be done on a regular basis through usual contacts with bodies representing trades, designers, verifiers and the industry in general. The implemented changes will be subject to a review within a ten year period.

# SUMMARY AND RECOMMENDATIONS

Summary of the consultation results and also subsequent decisions by the Scottish Government via the Fire Safety Review Panel will inform any recommendations in late Autumn.

 **Summary costs and benefits table**

|  |  |  |
| --- | --- | --- |
| **Option**  | **Total b****enefit per annum: - economic, environmental, social**  | **Total cost per annum:** * **economic, environmental, social**
* **policy and administrative**
 |
| **1 – Do nothing**  | [To be completed when policy direction known]No benefits, other than no additional costs to developers and procurers of affected buildings. | To be completed when policy direction known]No cost implications for those involved in the design or procurement of affected buildings.  |
| **2 – Amend building standard 2.7 and improve relevant guidance to existing standards within the Technical Handbooks**  | [To be completed when policy direction known]Overall the proposals will improve the safety of occupiers of the affected buildings in the unlikely event of a fire in a building getting out of control. From an environmental perspective, any improved cladding requirements will reduce the impact of, fire incidents spreading on the outer façade of a building. | To be completed when policy direction known] |

# DECLARATION AND PUBLICATION

• **Sign-off for Partial BRIAs:**

 I have read the partial Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact will be assessed with the support of businesses in Scotland.

**Signed:**

**Date:**

**Shona Robison**

 Cabinet Secretary for Social Justice, Housing and Local Government

 Scottish Government

**Scottish Government Contact point:**

Scott Young,

Building Standards Division

Email: scott.young@gov.scot