LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

7th Meeting, 2020 (Session 5)

Wednesday 26 February 2020

The Committee will meet at 9.00 am in the James Clerk Maxwell Room (CR4).

1. Declaration of interests: Jeremy Balfour MSP will be invited to declare any relevant interests.

2. Decision on taking business in private: The Committee will decide whether to take items 6 and 7 in private.

3. Subordinate legislation: The Committee will take evidence on the Energy Efficiency (Domestic Private Rented Property) (Scotland) Regulations 2020 [draft] from—

   Kevin Stewart, Minister for Local Government, Housing and Planning,
   Karen Major, Private Rented Sector Regulations, and Norman Macleod,
   Senior Principal Legal Officer, Scottish Government.

4. Subordinate legislation: Minister for Local Government, Housing and Planning to move—S4M-20854—That the Local Government and Communities Committee recommends that the Energy Efficiency (Domestic Private Rented Property) (Scotland) Regulations 2020 [draft] be approved.

5. Building regulations and fire safety in Scotland: The Committee will take evidence on this matter, with an emphasis on the issue of ‘zero valued homes’ from—

   Phil Diamond, Chartered Building Surveyor, Diamond and Co;

   Matthew Jupp, Principal, UK Finance;

   Keith Denholm, Director at Allied Surveyors, Royal Institution of Chartered Surveyors;

   Brian Smith, Partner with Simpson & Marwick Solicitors, Law Society of Scotland;
Derek MacDonald, Joint Managing Director of Newton Property Management, Property Managers Association Scotland.

6. **Building regulations and fire safety in Scotland**: The Committee will consider the evidence heard earlier in the meeting.

7. **Community Wellbeing**: The Committee will consider its next steps in relation to its digital engagement exercise on community wellbeing.

Peter McGrath
Clerk to the Local Government and Communities Committee
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The Scottish Parliament
Edinburgh
Tel: 0131 348 5232
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The papers for this meeting are as follows—

**Agenda item 3**

Note by the Clerk LGC/S5/20/7/1

**Agenda item 5**

Building regs - Clerks paper LGC/S5/20/7/2
PRIVATE PAPER LGC/S5/20/7/3 (P)

**Agenda item 7**

PRIVATE PAPER LGC/S5/20/7/4 (P)
PRIVATE PAPER LGC/S5/20/7/5 (P)
Overview of instrument

1. The following instrument, subject to affirmative procedure, is being considered at today’s meeting:

   - Energy Efficiency (Domestic Private Rented Property) (Scotland) Regulations 2020

Background

2. These Regulations introduce measures to improve the energy efficiency of certain private rented property in Scotland. The policy note for the instrument provides further detail and is attached at Annexe A.

3. An electronic copy of the instrument is available at:
   

4. The Committee needs to report on this instrument by 16 March 2020.

Delegated Powers and Law Reform Committee consideration

5. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 18 February 2020 and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Procedure

6. Under Rule 10.6.1 (a), this instrument is subject to affirmative resolution before it can be made. It is for the Local Government and Communities Committee to recommend to the Parliament whether the draft instrument should be approved.

7. The Minister for Local Government, Housing and Planning has, by motion S5M-20854 (set out in the agenda) proposed that the Committee should recommend the approval of this statutory instrument. The Minister will attend in order to speak to and move the motion. Ahead of the formal debate (as part of an earlier agenda item), there will be an opportunity for members to ask questions of the Minister and his officials on the background to and purpose of this instrument.

8. At the end of the debate, the Committee must decide whether or not to agree the motion, and then report to Parliament accordingly. Such a report need only be a short statement of the Committee’s recommendations.
ANNEXE A

POLICY NOTE

The Energy Efficiency (Domestic Private Rented Property) (Scotland) Regulations 2020

1. The above instrument was made in exercise of the powers conferred by section 55 of the Energy Act 2011. The instrument is subject to affirmative procedure.

Purpose of the instrument.

2. The regulations will require private rented landlords to improve the energy efficiency of domestic private rented sector (PRS) property in Scotland. They prescribe a minimum level of energy efficiency by means of the energy performance indicator included on the energy performance certificate (EPC) for the property. The minimum level is set for the period 1 October 2020 to 31 March 2022 as EPC energy performance indicator E, and from 1 April 2022 as EPC energy performance indicator D. Subject to prescribed exceptions, a landlord of a domestic private rented property must not grant a new tenancy of the property after 1 October 2020, and must not continue to let the property after that date, where the energy efficiency of the property is below the minimum level.

Policy Objectives

3. The policy intent is to improve the energy efficiency of private rented housing. The Programme for Government (PfG) 2019-2020 states that from 1 April 2020 private rented sector landlords will have to meet minimum energy efficiency standards for new tenancies. This is within the aims of Energy Efficient Scotland, which seeks to improve the energy efficiency of the Scottish existing building stock. Minimum energy efficiency standards in the private rented sector support the Scottish Government’s efforts to meet its climate change, energy efficiency and fuel poverty targets. Furthermore, improvements in the energy efficiency in domestic private rented properties will help the Scottish Government achieve broader objectives, which include supporting economic growth and jobs in the green construction industry and improving public health.

4. These regulations introduce a minimum level of energy efficiency in the domestic private rented sector: initially at EPC band E and then rising to EPC band D. The minimum level is set for the period 1 October 2020 to 31 March 2022 as EPC energy performance indicator E, and from 1 April 2022 as EPC energy performance indicator D. Subject to prescribed exceptions, a landlord of a domestic private rented property is prohibited from letting a sub-standard property from 1 October 2020 where the energy efficiency of the property is below the minimum
level. The landlord must carry out relevant energy efficiency improvements to achieve the minimum standard before letting the property. The regulations provide for exemptions including where the landlord has made all the relevant energy efficiency improvements, where such improvements will have a negative impact on the fabric or structure of the property and where the costs actually incurred and/or anticipated (or the sum of cost incurred and anticipated) in making energy efficiency improvements have exceeded or will exceed the prescribed cost cap. Landlords seeking to rely on an exemption must register that exemption on an exemptions register maintained by the local authority in their area. Local authorities have been granted enforcement powers to serve compliance notices if they consider that a landlord may be in breach of the regulations and penalty notices imposing a financial penalty where the local authority is satisfied that the landlord is in breach of the regulations.

Consultation

5. The Scottish Government consulted on policy proposals for a minimum standards for energy efficiency sector in the PRS in 2017, and there was support for setting a rising standard of energy efficiency over time, whilst tackling the least energy inefficient properties first. A copy of the consultation report is published online at https://www.gov.scot/publications/energy-efficiency-condition-standards-private-rented-housing-analysis-responses-public/
The Scottish Government subsequently consulted on draft regulations and the draft guidance on the minimum standards in the energy efficiency sector in the private rented sector in the summer of 2019, allowing interested parties to provide feedback. A copy of the consultation report is published online at http://www.gov.scot/ISBN/9781839605154.

6. A full list of those consulted and who agreed to the release of their response is attached to the consultation report. Respondents include CoSLA, Scottish Association of Landlords & Council of Letting Agents; Existing Homes Alliance Scotland; Energy Action Scotland; Scottish Land & Estates; Consumer Futures Unit, Citizens Advice Scotland; Chartered Institute of Housing Scotland; Shelter Scotland.

7. We have engaged with a range of landlord, fuel poverty and climate change interests, as well as local authority interests.

8. The evidence shows that a higher proportion of properties in the private rented sector fall into the worst energy efficiency bands (E, F and G) than is the case for other tenures. Tenants in the social rented sector (the tenure with the highest levels of energy efficiency) have benefitted from the strong regulatory framework set by the Scottish Housing Quality Standard and the Energy Efficiency Standard for Social Housing. There are also likely to be market failures, such as misaligned incentives between landlords, who pay for energy efficiency measures, and tenants, who benefit from them, which cause energy efficiency in the private rented sector to lag the owner-
occupier sector. This indicates that regulation is now required if private sector tenants are to enjoy the warmer and easier to heat homes more prevalent in other tenures.

9. It is recognised that as this is a new requirement on private landlords, a range of support will be required, including landlord specific guidance and ensuring that a loan offer is available from the Scottish Government to support landlords to improve energy efficiency.

10. To provide an adequate lead in time for landlords to meet the new standard, and allow time for those landlords seeking to rely on an exemption (evidence of which must be submitted for registration) with local authorities, the prohibition on letting a sub-standard property in respect of new tenancy agreements will commence on 1 October 2020. This lead in time will also address concerns raised by COSLA and SOLACE regarding the preparations required on the part of local authorities, as enforcement authority for the regulations. Further, regarding the introduction of the regulations, we intend for the first phase of the regulations (to reach EPC E) to support local authorities in their role as enforcement authority, working in partnership with local areas to establish how the regulations bed down in practice. This will mean initially gathering evidence about non-compliance, identifying and eliminating barriers and considering how these regulations can be used to strengthen existing programmes. We will review this approach by 2022, for the second phase of the regulations and look to deliver a strengthened enforcement approach at this point. We have worked with local authorities and local authority tailored guidance and a ‘toolkit’ has been developed to aid the monitoring and enforcement of the regulations.

Impact Assessments

11. A Business and Regulatory Impact Assessment, an Equality Impact Assessment; the Fairer Scotland Duty Assessment; Island Communities Impact Assessment; and the Children’s Rights and Wellbeing Impact Assessment are also available


12. The Information Commissioner’s Office (ICO) has confirmed that they are satisfied no further action is required in terms of data protection.

Financial Effects

13. A Business and Regulatory Impact Assessment (BRIA) has been completed and is available at the link above.
14. Rather than requiring all properties to reach an EPC D immediately, the regulations have been designed to come into effect in a phased manner, by first applying to properties where there is a change in tenancy before applying to all properties by a backstop date, coupled with setting a trajectory so that the minimum standard is initially set at an EPC E and only subsequently raised to an EPC D. This will help minimise any disruption to landlords and tenants, and reduce pressure on the supply chain, while ensuring that within a reasonable time period all tenants in the private rented sector enjoy a minimum standard of energy efficiency.

15. The average projected cost of upgrading dwellings which currently have an EPC F or G to an EPC E is around £1,140. These upgrades are expected to produce substantial savings in fuel bills, of around £330 per year even on a more conservative basis of applying in-use factors. Once these dwellings have been improved to an EPC E, the cost of raising these dwellings, as well as dwellings with an initial EPC of E, to an EPC D is projected to be around £2,010 on average, and will produce fuel bill savings of around £190 per year on average (applying in-use factors). As a result, the average net present value of the regulations (which in addition to upgrade costs and fuel bill savings also takes into account the cost of obtaining a post-upgrade EPC report, makes an allowance for hidden costs, such as the hassle factor of clearing lofts, and discounts future costs and benefits) is expected to be significantly positive, at around £5,480 for the first stage to EPC E and £1,110 for the second stage to EPC D. In addition there will be benefits to society from lower greenhouse gas emissions.

16. Modelling suggests that the most common measures required to raise dwellings from an EPC E, F or G to an EPC D are loft insulation, low energy lighting, a hot water tank jacket and cavity wall insulation, which are all simple, low cost measures. Having a staggered trajectory to EPC E first and then to EPC D gives landlords flexibility to plan their investment in a cost effective manner.

Scottish Government
Housing and Social Justice Directorate
January 2019
Introduction

1. This paper provides background information on the Committee’s evidence session on building regulations and fire safety in Scotland, with a particular focus on the issue of “zero valuation” homes.

2. In the second half of 2019, it began to reach public attention that there was a growing problem of certain domestic properties (mainly modern multi-storey apartment blocks) receiving a “zero” survey valuation because it could not be verified that cladding used on them met post-Grenfell disaster safety standards. The main purpose of this evidence is to enable a public discussion as to the scale and nature of the problem, how close we appear to be to a solution, and whether any Governmental intervention or assistance may be necessary. The discussion will involve a cross-section of stakeholders in the property market.

3. The issue of zero-valued homes is a cross-UK problem, but another purpose of the session will be to ascertain the extent to which there is a “Scottish dimension, given Scotland’s distinct conveyancing laws and the slightly different, and still evolving, approaches to regulating fire safety in buildings that have arisen in the aftermath of the Grenfell tragedy.

4. Whilst the issue under discussion is a distinct and relatively new one, it could be said to have arisen as a consequence of the Grenfell tragedy. The Committee’s evidence session will build on scrutiny work it undertook earlier in this session, focussing on building standards and fire safety and lessons to be learned, in terms of improving regulation and risk management, following Grenfell. This led to the publication of a Committee report in October 2017. More information on this work can be found via this link to the relevant Committee webpage.

5. This page also contains further links to two recent one-off evidence sessions at which the emerging issue of zero-valued homes was discussed in brief, on 20 November 2019, when the Committee heard from fire safety experts and representatives of the insurance of surveying industry; and on 22 January 2020, when the Committee heard from the Scottish Government.
Background – zero valuation of domestic properties

6. The UK Ministry for Housing, Communities and Local Government issued Advice Note 14 in December 2018. This note provided advice to anyone responsible for, or advising on, the fire safety of external wall systems on high rise residential buildings, where materials such as timber, polystyrene and high-pressure laminate have been used. A separate, but related, advice note applied to buildings clad in Aluminium Composite Material (ACM).

7. These advice notes have been superseded by a single consolidated advice document - Advice for Building Owners of Multi-storey, Multi-occupied Residential Buildings, published by the UK Ministry of Housing, Communities and Local Government on 20 January 2020. This reiterates the previous advice about the responsibilities of building owners for fire safety, stating:

“Building owners or their appointed competent professional advisors(s) should check that the external wall systems on their buildings meet an acceptable standard of safety and do not contribute to the external spread of fire, irrespective of building height. Spandrel panels (including window and infill panels) are also part of the external wall of the building and should be checked. Balconies, and risks arising from their construction materials, geometry and use, must also be considered.”

8. Although this advice does not apply directly to Scotland, the Scottish Government expects similar action to be taken by building owners. In addition, UK-wide financial institutions tend not to discriminate between buildings located in Scotland or elsewhere in the UK. The introduction of this advice has led to some mortgage lenders refusing to provide loans for the purchase of flats in high rise buildings unless there is proof that they met the requirements set out in the advice note. Where such proof is not available, surveyors could value such properties at £0. This obviously has implications for home owners, those wishing to buy and the operation of the wider housing market.

9. It became apparent that there was no standard process for assessing the fire safety of existing high-rise properties that would satisfy the needs of home owners and financial institutions. The Royal Incorporation of Chartered Surveyors (RICS), working with the Building Societies Association (BSA), and UK Finance, have developed a new industry-wide valuation process aimed at resolving this issue, known as External Wall Systems 1 (EWS1). This requires building owners to appoint an expert to assess whether materials used to clad the building pose a fire risk. In Scotland, property factors need to obtain majority approval from individual flat owners before getting an EWS, which may raise practical problems.
Panellists on 26 February, associated written evidence, and next steps

10. At the evidence session, the Committee will hear from—
   • Phil Diamond, Chartered Building Surveyor, Diamond and Co;
   • Matthew Jupp, Principal, UK Finance;
   • Keith Denholm, Director at Allied Surveyors, Royal Institution of Chartered Surveyors;
   • Brian Smith, Partner with Simpson and Marwick Solicitors, Law Society of Scotland.

11. The Law Society of Scotland, RICS and UK Finance have all provided written evidence in advance of the session (Annexes A, B and D respectively of this paper.) At the Committee’s 22 January evidence session with the Scottish Government, the Minister for Local Government, Housing and Planning undertook to forward to the Committee and exchange of correspondence with his UK Cabinet counterpart on this matter. This has now been received and is set out in Annexe C below.

12. As noted above, the primary purpose of this evidence session is to provide a public forum for what has become a matter of public interest and of serious concern to the householders affected by it. In a private discussion after the session, the Committee will consider any next steps in relation to this matter.
The Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland’s solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Property Law Committee welcomes the opportunity to submit written evidence to the Local Government and Communities Committee on the issue of Fire Safety and Zero Value Homes. The Committee has the following comments to put forward for consideration.

General Comments

The cladding issue is primarily a housing issue related to fire safety. Its effect on the housing market is a secondary issue. The former is properly a matter for government. The latter is one that stakeholders in the property market can try to alleviate, so far as that is within their collective competencies.

Stakeholders in the Property market have met regularly to discuss what can be done and have introduced the EWS1 to seek to provide clarity as to blocks which actually have issues with cladding. LSS consider however that government, and in particular the Scottish Government, must take the lead in this issue both in trying to work towards solutions and in communicating to the public. It is a government's role generally to involve itself in major issues which affect a significant number of its citizens. For example, those currently affected by flooding are looking to government to do what it can to assist.
There is an (understandable) concern at any fire risk existing in properties in the current climate. It seems unlikely that zero fire risk can ever be achieved in any building. Society needs to establish an acceptable combustibility standard so that the market can understand the risk.

Whist understanding post-Grenfell issues around potential liabilities it is felt that there are a number of initiatives government could undertake:-

1. A scheme to try to identify and record "green-flagged" blocks to remove them from concern and seek to move towards an understanding of the true extent of the problem.
2. Coordinating multi stakeholder efforts to try to find answers to problems including
   a. The barriers to providing single block reports due to the limitation in factor's powers and the nature of co-ownership in Scots law
   b. Find means to address the limitations on availability of suitable PI cover for those providing EWS1
   c. Providing clarity on who is qualified to provide such certification and seeking to increase the number of professionals available to carry out the testing.
3. Communicating with those potentially affected to understand the nature of the problem and encouraging/facilitating co-owners to get inspections done.
4. Conducting, and driving, the debate on where the acceptable level of combustibility of construction materials should lie.
5. Establishing the buildings which have unacceptable cladding materials, what the remediation costs are going to be and who is going to pay these.

It is perceived that there may be questions between UKG and SG as to who should take what initiatives but a cooperative approach by both is required here. Stakeholders including LSS, RICS, ESPC and UK Finance have worked to try to find a workable system to start the market moving and have made good progress to date but there are issues which are in the process of being worked out or need working out:-

1. RICS are working on standardised procedures and wording around Home Reports to seek to avoid the variations and sometimes confusion arising from survey reports
2. Questions have arisen around competency of those carrying our inspections and whether they carry PI insurance to cover their reports. This makes it difficult to rely on reports
3. Fraudulent reports have been noted in England
4. Costs involved in obtaining EWS1 certification are not cheap and the inability to commission a single report means these costs will be multiplied.
5 A "register" of green, amber and red flagged buildings would help agents trying to market properties or buy for clients but GDPR and blight risk concerns hold that idea back.

For solicitors advising clients on a purchase, who are at the very end of the process, there is so much uncertainty, even with an EWS1, that it is difficult to advise clients and the tendency will naturally be to advise clients to be cautious. Potential remediation costs could be huge. Confidence needs to be restored and that needs more certainty which can only come with a lead being taken to work through all the issues.

ANNEX B

Local Government and Communities Committee
Building Regulations and Fire Safety in Scotland
Royal Institution of Chartered Surveyors (RICS)

1. In November 2019, RICS provided written and oral evidence to the committee on issues surrounding fire safety and zero-valued homes.

2. Whilst RICS’ position on the issues have not changed, there have been changes at a UK Government level, and RICS provides this submission as a supplement to our November written submission

3. The standout issue in November was the MHCLG Advice Note 14 (AN14) – which had mandatory implications for properties in England and Wales, but not Scotland, where it is the same general principles of AN 14 that applied.

4. Since that session, AN14 has been removed from use, MHCLG has amalgamated its advice notes in to one document, and the RICS-led External Wall Fire 1 Review – the EWS 1 Form – has been brought into practice.

EWS1 Form (attached)

5. In December 2019, the EWS1 form was formally launched and revealed to the market after a rigorous, collaborative development exercise involving UK Government departments and experts from across the housing, fire, and mortgage lending sectors – including RICS.

6. The objective of the EWS1 form and process is to bring clarity to the market, transparency with what to request and expect to receive.
7. This form has led to a simplified process for professionals assessing a property for mortgage valuation purposes by identifying any combustible materials. We are confident the role of this form will assist to reverse the negative impact on sales that has been reported.

8. A copy of the EWS form – which is included in this submission as an appendix - will remain a living document, and will be tweaked as appropriate, or when required, depending on how the market reacts.

Differing Legislation and Regulations

9. Complexities around AN14 primarily arose from the differing Building Regulation systems in England and Wales, and Scotland, with local authorities and Scottish Ministers able use powers in the Building (Scotland) Act 2003 – outwith those stipulated in the advice note.

10. The differences in legislation and regulations – whether that is relating to fire regulations or property ownership tenure – mean that some elements of the EWS1 are not wholly compliant with the variances in the Scottish property system.

11. As a technical document, the EWS1 form itself works, as it is purposefully neutral.

12. However, it is the legislative differences between England and Wales, and Scotland which cause the discrepancy. For example, the form works on a one per block basis, but this is hard to achieve in Scotland given the need for a majority of owners to direct factors and other professionals.

Practice and Zero-Valued Homes

13. RICS professionals in Scotland, when preparing a Home Report, will place a value on the property subject to clarification of the External Wall System.

14. The placing of zero value on such properties is only made when a report is submitted by a chartered surveyor to a lender. This is because of the guidance that
the lenders issue to chartered surveyors, and failure to follow that guidance will result in removal from the lenders panel.

15. With reference to paragraph 12, the current tenure framework in Scotland prohibits one EWS 1 form being prepared per block. EWS 1 was prepared on the basis that it would be obtained by the freeholder as that doesn’t exist, individual reports are required in Scotland.

Recommendations

16. We call for Government to convene and lead a task force to work up a practical and viable solution, or solutions, to the complexities surrounding zero-value homes, centered around the industry-led EWS1 form to ensure it is compliant with Scottish legislation and practice.

17. This task force should include Government officials, and representatives from the property, legal and mortgage lending professions.

18. The Scottish Government should establish a remediation fund to deal with properties that have cladding issues; similar to the UK Government’s Private Sector ACM Cladding Remediation Fund.

19. However, the Scottish Government should recognise that remediation works are not limited to Grenfell style ACM cladding, but to many other types of external wall systems. If a fund is established, it should extend beyond ACM.

20. The Scottish Government should explore the impact of the LBTT additional dwelling supplement on individuals, couples or groups, who have been able to buy a new property, but can’t sell their previous clad property.
Form EWS1: External Wall Fire Review

Objective - This form is intended for recording in a consistent manner what assessment has been carried out for the external wall construction of residential apartment buildings where the highest floor is 18m or more above ground level or where specific concerns exist (Note 1). It should not be used for other purposes. It is to be completed by a competent person with the levels of expertise as described in Notes 2 and 3 below.

This review is for the sole and exclusive use of the client organisation named below. No responsibility is accepted to any third party for the whole or any part if its contents (Note 4). For the avoidance of doubt, the term 'third party' includes (but is not limited to): any lender who may see the review during the process through which they come to make a loan secured on any part of the Subject Address; and any prospective purchaser who may see the review during the process through which they come to purchase an interest in any part of the Subject Address.

Client organisation:………………………………………………..

Subject Address (One form per block)

<table>
<thead>
<tr>
<th>Block or building name</th>
<th>Street</th>
<th>Town</th>
<th>Postcodes (all built)</th>
</tr>
</thead>
</table>

I confirm that I have used reasonable skill and care to investigate (Note 5) the primary external wall materials (typically insulation, filler materials and cladding) and attachments of the external walls of the above building/block.

OPTION A (Note 1) – Where external wall materials are unlikely to support combustion

I confirm that:
- I meet the professional body membership and competence criteria as described in Note 2
- In relation to the construction of the external walls, to the best of my knowledge the primary materials used meet the criteria of limited combustibility (Note 6) or better and cavity barriers are installed to an appropriate standard in relevant locations (Note 7)
- In relation to attachments to the external wall (tick one of the following):
  - A1 - There are no attachments whose construction includes significant quantities of combustible materials (i.e. materials that are not of limited combustibility (Note 6) or better);
  - A2 - There is an appropriate risk assessment of the attachments confirming that no remedial works are required
  - A3 – Where neither of the above two options apply, there may be potential costs of remedial works to attachments (Note 8)

OPTION B (Note 1) – Where combustible materials are present in external wall

I confirm that:
- I meet the professional body membership and competence criteria as described in Note 3
- I have used the reasonable skill and care that would be expected of the relevant professional advisor to assess the level of fire risk (Note 9) presented by the external wall construction and attachments (tick one of the following)
  - B1 - I have concluded that in my view the fire risk (Note 8) is sufficiently low that no remedial works are required
  - B2 - I have concluded that an adequate standard of safety is not achieved, and I have identified to the client organisation the remedial and interim measures required (documented separately).

-------------------------------------------------------------------------------------------------------------------------------
Name  …………………………… Qualifications  ……..………………………..
Organisation …………………………… Professional body  ……….………………………
Signature …………………………… Date   ………..……………………..
NOTES

Note 1 - This form includes two options. Option A is for buildings where the materials used in the external wall would be unlikely to support combustion. Option B is for buildings where Option A does not apply and a more detailed review (and hence higher level of fire expertise) is required. The signatory should use either the Option A approach or the Option B approach and delete/cross out the unused option. Within each option there are sub-options, the user should tick the box of the relevant sub-option.

Note 2 – For Option A, the signatory would need the expertise to identify the relevant materials within the external wall and attachments and whether fire resisting cavity barriers and fire stopping have been installed correctly. However, this would not necessarily include the need for expertise in fire engineering. The signatory should be a member of a relevant professional body within the construction industry.

Note 3 - For Option B the signatory would need expertise in the assessment of the fire risk presented by external wall materials and should be a member of a relevant professional body that deals with fire safety in the built environment. This could be a Chartered Engineer with the Institution of Fire Engineers or equivalent.

Note 4 – Should there be a desire for a third party to rely on this form, they should contact the signatory’s organisation.

Note 5 - The investigation must include evidence of the fire performance of the actual materials installed. For both Options A and B this would often include either a physical inspection by the signatory to this form, or inspection of photographic or similar information gathered by a 3rd party (subject to the signatory having sufficient confidence in that 3rd party). It would also include the standards of construction of key fire safety installations such as cavity barriers. Given the nature of external walls this would typically involve investigations in a limited number of locations (actual number to be determined by the signatory). Review of design drawings may assist but on their own would not be sufficient. If the wall construction includes multiple wall types, the investigation should include each type.

Note 6 – The term ‘limited combustibility’ is as defined in BS 9991:2015.

Note 7 – Cavity barrier fire performance and locations to be based on relevant fire safety design guidance documentation such as BS 9991 or relevant statutory guidance.

Note 8 - In this situation the signatory should notify the client organisation that an appropriate risk assessment of the fire risk of the attachments might be required.

Note 9 - The assessment of fire risk as described above includes that insofar as is necessary to ensure a reasonable standard of health and safety of those in and around the building, all external wall constructions and any external attachments (e.g. balconies) of the building:

- Resist spread of fire and smoke so far as is reasonably necessary to inhibit the spread of fire within the building, and
- Are constructed so that the unseen spread of fire and smoke within concealed spaces is inhibited, and
- Adequately resist the spread of fire over the walls, having regard to the height, use and position of the building.

The assessment takes account of regulations and published design guidance as were current at the time of construction as well as those which are current at the time of this assessment. It cannot be guaranteed that it would address guidance and regulations which may be introduced in the future.

Note 10 - The signatory may wish to provide their client organisation with a separate report on their investigation to support their statements in this form. That separate report would not normally...
need to be supplied to the valuer along with this form (unless there are specific issues which may require it).

**Note 11** – This form will need to be reassessed if any significant changes occur to the external wall or attachments of the building and is valid for up to 5 years from the date at which it is signed.
Flow Chart

Expert to have competence to carry out an Option A assessment

Are the primary materials of the external wall of limited combustibility?

Refer to Note 6 for definition of 'Limited Combustibility'.

FORM OPTION A

Are there any attachments to the external wall?

Yes

Do the attachments contain significant quantities of materials that are not of limited combustibility?

Yes

Has a fire risk assessment determined that the resulting fire risk is acceptable without remedial works?

No

FORM OPTION B

Does the expert meet the expectation required for an Option B assessment?

No

Appoint a Fire Engineer

Yes

Expert undertakes an assessment of fire risk associated with external walls and attachments

Is the fire risk low?

No

Yes

Expert completes Option B1

Expert completes Option B2
18 October 2019

Dear Robert

MORTGAGE LENDING ON HIGH-RISE DOMESTIC BUILDINGS

Building and fire safety continues to be an area of significant concern across the country. At our recent Ministerial Working Group we heard about new fire safety standards that have now been implemented through our building standards. We are also making progress in developing fire safety guidance for owner and managers of high rise domestic buildings.

The purpose of this letter is highlight an area of concern, although one that I am sure you will already be aware. Recently a number of mortgage lenders have been requesting reports from homeowners to provide detailed information on the type of cladding on their buildings. These requests appear to have been introduced unannounced and without due consideration to the impact on those trying to sell property.

The requirements that homeowners are being asked to meet appear to be near impossible, leaving them unable to sell or re-mortgage their homes until this matter has been satisfactorily resolved. This situation is clearly causing significant stress and anxiety for people across Scotland as well as the rest of the UK.

Responsibility for mortgage lending, and finance more generally, is a matter reserved to the UK Government. I appreciate the engagement that there has been to date between our respective officials on this matter, and I am keen for this to continue. I would also offer that my officials be involved in helping to ensure that any proposed resolution will also be workable within the Scottish legal and building standards systems.

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I understand that you believe that the solution for this must come from industry. However, this appears to be a slow process and I would urge you to push for a swift response and resolution from the mortgage industry.

Yours sincerely

Kevin Stewart

KEVIN STEWART
Dear Mr Jenrick

MORTGAGE LENDING ON HIGH-RISE DOMESTIC BUILDINGS

I wrote to you on 16 October regarding ongoing concerns about mortgage industry changes in treatment of applications from prospective buyers of properties with cladding, resulting in people being unable to buy or sell homes. I am requesting a response as there is a clear and urgent need for this matter to be resolved as soon as possible for the many households affected.

The numbers of people affected - through no fault of their own - continues to grow. The pressures this places on them as individuals and on the housing market will continue to grow until a solution is found and implemented. I would like to respond to those who have been in touch with me about the actions the UK Government has taken to settle the issue.

For my part, I have followed up a discussion I had with UK Finance at their Annual Scotland Mortgage Dinner on 4 October in writing seeking urgent action and offering Scottish Government cooperation to ensure their solution meets the needs of our legal system and will assure people across both Scotland and the UK.
I would be grateful if your officials could continue to work with my own to press for an urgent solution to be put in place, and if you could add your voice to those seeking rapid action from UK Finance and others in industry to resolve this as soon as possible.

Kind regards

[Signature]

KEVIN STEWART
Minister for Local Government, Housing and Planning
Kevin Stewart MSP

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Rt Hon Robert Jenrick MP
Secretary of State for Housing, Communities
and Local Government
Ministry for Housing, Communities and Local
Government
2 Marsham Street
London
SW1P 4DF

Dear Robert,

I wanted to write to offer my congratulations on your re-appointment as Secretary of State and to follow up on my previous correspondence on the issue of mortgages and cladding.

I appreciate that the last few months have seen significant issues arising, not least the General Election. In the meantime, however, people in Scotland and across the United Kingdom have continued to face difficulties in selling their homes due to lenders changing their approach to lending on properties with cladding.

I wrote to you on 18 October and on 8 November to inform you of the growing concerns in Scotland, including the issue being raised in the Scottish Parliament by Members, and to seek your assistance and views on dealing with this matter quickly. I hope very much to receive a response on this as soon as possible now that you are returned to post.

People across the nations are anxious that this is resolved as soon as possible; I would like to be able to reply comprehensively to both MSPs and members of the public who have corresponded with us on this matter. While I have of course provided responses in the intervening period, I would like to do so in full. I have also committed to passing on your replies and the position of the UK Government.

In the meantime, and with engagement from officials, UK Finance and RICS have introduced a new form and process to help resolve this matter. While I understand this proposed solution is intended be all-UK and all-industry, we will maintain a watching brief to ensure this performs as intended; not least as Scotland’s system of tenure is different to that in England. I would be grateful to be kept informed of how your experience of the solution develops and whether it performs as required for all owners.

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Even once fully implemented, it is inevitable that some people will find themselves with properties that do not meet the requirements of this process. This will require ongoing work and cooperation from both our Governments and I hope I can rely on continued joint working and discussion as we seek to resolve the issues arising.

Your aye,

Kevin Stewart

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Rt Hon Robert Jenrick MP
Secretary of State for Housing, Communities and Local Government
Ministry for Housing, Communities and Local Government
2 Marsham Street
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Dear Robert

I am writing to you for a fourth time since 18 October 2019 on the issue of mortgage lending and cladding. I am also copying this letter to the Secretary of State for Scotland for his interests. This is a serious issue for home owners and prospective buyers, all of whom have been affected by policy changes made by others and who are suffering through no fault of their own.

Some are unable to sell or re-mortgage their homes due to changes made by lenders following the publication of MHCLG’s Advice Note 14. Others will have seen purchases fall through as lenders have been unwilling to sanction mortgages on these properties until further clarity is obtained. People across Scotland, Members and Committees of the Scottish Parliament, Scottish Ministers and others have been seeking support to resolve this matter for some time.

Having written to you on 18 October, 8 November and on 19 December last year, I would have expected the courtesy of a reply to any or all of those letters indicating your views, setting out what actions you are taking and what further actions we might all consider to resolve this impasse as soon as possible.

In my letter of 18 October I offered my officials’ involvement to ensure any proposed resolution be workable for Scotland. That offer remains, not least as the pressure on the people through no fault of their own, and on the market as a whole, continues to grow and will do so until the matter is fully resolved.

I appreciate that first and foremost this is an issue for the industry to resolve, and I am aware that the industry introduced the EWS1 Form and process at the end of the last year. However, as I noted in my letter of 19 December this relies in some respects on a tenure system that does not exist in Scotland. There are still questions being raised by members of the public, press and Parliament and whether this will fully resolve the matter across the UK is still to become clear.

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I would ask now for an urgent reply, an indication of what action you propose to resolve the matter and any suggestions you may have on joint working to resolve a matter of real importance to people both in Scotland and across the UK.

Kind regards

KEVIN STEWART

Cc: The Rt Hon Alister Jack MP, Secretary of State for Scotland
Rt Hon Robert Jenrick MP  
Secretary of State for Housing, Communities and Local Government  

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Our Ref: 5252009  

February 2020

Dear Kevin,

MORTGAGE LENDING ON HIGH-RISE DOMESTIC BUILDINGS

Thank you for your letters of 18 October, 8 November, 19 December and 24 January regarding access to mortgage finance for homeowners or potential homeowners of properties in high rise residential buildings. I apologise for the delay in responding and want to thank you for writing in on this important matter.

I am aware that concerns about cladding systems have had an effect on the mortgage market. While the Government is working with industry to understand the scale of the problem, it does not appear to be universal. Lenders are lending on flats in high rise buildings but obtaining the necessary paperwork to support a decision can take time.

In order to provide mortgage finance, lenders must have a good idea of the value of a property and any whether any major works are due to take place. Without enough information, the valuation process is paused or defaults to zero until an assessment can be made.

Where building owners - whether freeholders or common-holders - are uncertain of the safety of their property, they should seek professional advice from an appropriately qualified chartered construction professional. They should share any relevant information and reports from professional advice with lenders and valuers.

As you are aware, in December last year the Royal Institution of Chartered Surveyors (RICS) published a form for industry to manage valuations and lending on high-rise residential buildings of 18m and over. The department will continue to engage with industry as this form is used. In your recent letters, you raise concerns on its potential applicability for buildings in Scotland. I understand that RICS have been engaging with Scottish surveyors on its applicability within the different Scottish system.

I am pleased that you have had the chance to talk to UK Finance. Officials in this department are aware of the challenges faced in Scotland and are keen to continue to support Scottish colleagues' engagement with industry.

Since the date of your letter, Government has published a revised and clarified Advice Note which replaces the previous 22 Advice Notes, including the advice that some lenders were referring to before the introduction of the RICS form. You can find Building Safety Advice for Building Owners online at: www.gov.uk/government/publications/building-safety-advice-for-building-owners-including-fire-doors.
The new advice simplifies the language and consolidates previous Independent Expert Advisory Panel (Expert Panel) advice into one place. It places more emphasis on the need for building owners to address safety issues on buildings, regardless of height. It also highlights the Expert Panel's view that ACM and other metal composites with a polyethylene core should not be used in the external wall system of any residential building – at any height. However, it is advice for building owners and is not a statutory or compliance document and should not be used by lenders as such.

I know that our respective officials continue to work closely on this issue.

This letter has also been copied to The Rt Hon Alister Jack MP, Secretary of State for Scotland.

Yours ever,

[Signature]

RT HON ROBERT JENRICK MP
Written evidence

Scottish Parliament Local Government and Communities Committee: Zero Valued Homes

Date: 20 February 2020

Introduction

UK Finance is the collective voice for the banking and finance industry. Representing more than 250 firms, we act to enhance competitiveness, support customers and facilitate innovation.

We welcome the opportunity to submit written evidence on zero valued homes to the Local Government and Communities Committee as part of its ongoing scrutiny of building regulations and fire safety in Scotland.

Building regulations and fire safety in Scotland

We support the amendments that have been made to the technical handbooks explaining how to achieve the requirements of the Building (Scotland) Regulations 2014 which came into force on 1 October 2019. We do not have the expertise to comment on the specific measures being implemented but generally support steps that will improve and increase building safety.

The Grenfell Tower fire in 2017 led to an increased scrutiny of external wall systems on blocks of flats and other buildings, particularly those viewed as high-rise (those over 11 metres high under new regulations in Scotland). We recognise and support the steps that the Scottish Government has taken to address concerns about external wall systems and ensure that materials used on external walls in high-rise buildings are non-combustible or of limited combustibility. This will provide clarity and assurance for mortgage lenders, homeowners and buyers.

Mortgage valuations

The valuation of individual properties is an important part of the mortgage process. Mortgage lenders have a regulatory requirement to ensure that a property they are lending on is valued at or less than market value by an independent valuer using a reliable standard, such as those developed by the International Valuation Standards Committee, the European Group of Valuers’ Associations or the Royal Institution of Chartered Surveyors (RICS). In the UK most independent mortgage valuers will use the standard developed by RICS.

Lenders would expect valuers acting on their behalf to advise them on any factors revealed during the inspection that are likely to materially affect a property’s value and highlight any serious disrepair or potential hazards. Lenders would also expect valuers to draw attention to any potential maintenance costs that a homeowner may have to contribute to which could affect the value of the property.

It would generally be expected that serious concerns about fire safety or potential remediation work required to ensure fire safety would be included in a valuation report. If a valuer does not have the
information needed to provide an accurate valuation for mortgage purposes, it may suggest that additional information or expert advice is sought.

**Cladding on high-rise buildings**

Some flat owners who live in high-rise blocks have found it difficult to secure a mortgage as a result of uncertainty over cladding on their building. In December 2019 RICS, the Building Societies Association and UK Finance agreed an industry-wide process\(^1\) for the valuation of high-rise properties with cladding on them – to be used by valuers, lenders, building owners and fire safety experts. The new process aims to resolve issues by ensuring that there is agreement on what evidence is needed and who can provide it.

The External Wall Fire Review process requires a fire safety assessment to be conducted by a suitably qualified and competent professional and confirmed using the EWS1 Form. It establishes what material is on the outside of a building and what, if any, remediation work is needed. This delivers assurance for lenders, valuers, residents, buyers and sellers.

The Review was developed through extensive consultation with a wide range of stakeholders including fire engineers, lenders, valuers, and other cross industry representatives. Only one assessment is needed for each building and will be valid for five years.

The process, which is relatively new and still establishing in the market, will help resolve the impasse whereby homeowners are unable to sell their properties because of uncertainty about valuation of the property and the nature of the external cladding system and whether it meets regulatory requirements.

We recognise the law of property in Scotland means there is often no single building owner or legal entity to lead on the commissioning of cladding system inspections and certification, and are working with the Scottish Government and other stakeholders to find a practical solution that ensures people are safe in their homes and able to transact them as usual.

**Costs for the replacement of cladding**

Property owners are living in blocks with unsafe cladding and face large bills for the replacement of combustible cladding. This is fundamentally unfair. If necessary, the government could step in to ensure that the buildings they live in are made safe, perhaps seeking to recover funds from other parties (such as developers and insurers) at a later date.

**On-going costs relating to fire safety**

If borrowers are finding it difficult to meet their financial obligations as a result of costs relating to fire safety they should contact their mortgage lender who will consider any forbearance and support they may be able to offer on a case-by-case basis.