

Briefing

The latest on cladding – new tax and levy on developers and more support for leaseholders

The Government recently announced further measures to tackle the issue of unsafe cladding. There is not a huge amount of detail at this stage, which of course leads to many questions. In this briefing we set out the key measures that the Government announced and look at some of the questions the measures raise.

1. New tax on developers

The Government is proposing that a tax will be introduced next year, which it says, will raise at least £2 billion over a decade to help pay for cladding remediation costs.

The Government says that the tax will ensure that the largest property developers '*make a fair contribution to the remediation programme*' and that the Government will consult on the policy design '*in due course*'.

It is not clear how 'the largest property developers' will be defined but the Government's announcement immediately hit the share price of some of the larger developers.

Nor is it clear how the tax will be collected, although some commentators have suggested that it is likely to be in the form of increased Corporation tax.

And next year is not far off to introduce a new tax when there is a consultation to take place first. Will it happen in 2022?

2. Levy on developers

A 'Gateway 2' developer levy is to be introduced. It will apply where developers seek permission to develop certain high-rise buildings in England. Gateway 2 appears to link back to the Building Safety Bill which lists gateways 1-3 and states that gateway 2 '*occurs prior to construction work beginning. It bolsters the current building control 'deposit of full plans' stage where a dutyholder provides a building control body with their full design intention*'.

It is unclear when the levy will come into force.

It is also not clear what high-rise buildings will be covered (will it be limited to residential or any high-rise building?)

There are also questions as to how high a building will have to be for the levy to apply and how the levy will be calculated and collected.

3. Cladding and leaseholders in residential buildings

The Government has said it will pay for the removal of unsafe cladding in all residential buildings that are 18 metres high (6 storeys and over) in England.

There will also be a scheme to help leaseholders in residential buildings between 11-18 metres high (4 to 6 storeys). This scheme will be a long term low interest government backed finance arrangement. The Government says that no leaseholder will pay more than £50 per month.

This will undoubtedly be a relief for many leaseholders, as some were concerned that buildings between 11-18 metres would be left as built following the announcement by the Government in December 2020 of a £30 million relief fund to pay for the cost of installing an alarm system in building with unsafe cladding. Although it should be noted that there is no sign of any relief for the cost of any waking watch needed until fire alarms are installed.

What is not clear is how the Government is defining a residential building – does it include, for instance a care home or student accommodation or a hostel or hotel?

What will happen to non-residential buildings over 11 metres high with unsafe cladding?

Who is to pay for remediation works in residential (and non-residential buildings under 11 metres high) which have unsafe cladding?

And probably the real elephant in the room. Inspections have revealed that there is a multitude of other fire safety related issues in many buildings but at present there is no funding for these works. Who is to pay for them?

4. EWS1 forms

EWS1 forms were designed to deal with the issue that leasehold owners could not sell or re-mortgage flats where there were concerns that there might be an unsafe cladding system. The form was intended to ensure that all residential buildings with potentially unsafe cladding systems were checked and then either signed off as being safe, or flagged as requiring remedial works enabling a leaseholder to sell or re-mortgage. There has however been growing concern that lenders and purchasers have required EWS1 forms in circumstances where it is clear that the building does not present a risk, such as buildings with no cladding. There has also been an issue with availability of fire safety consultants (and their difficulty in obtaining professional indemnity insurance to certify EWS1 forms and therefore a reluctance to do so) meaning it can be difficult for leaseholders to acquire such forms. For more information click [here](#) to see Kate Warren's blog.

The Government has said it is working with the industry to reduce the need for EWS1 forms and that it was committing to a targeted, state-backed indemnity scheme for qualified professionals unable to obtain professional indemnity insurance for the completion of EWS1 forms. It not yet clear exactly what this will mean in practice.

Click [here](#) for the Government's announcement.

For more information, have a look at the Mills & Reeve [blog](#) on cladding and fire safety and watch out for posts on the Mills & Reeve [Construction and Engineering LinkedIn page](#).

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