

# The Responsible Actors Scheme and its role in building safety

With our focus on enhancing life safety at every fire door, we follow closely all industry developments that contribute to fire safety. One of the most significant schemes introduced by the government this year was the Responsible Actors Scheme. Having faced a few questions regarding it, we thought it was time to write a Rutland overview of this significant piece of legislation.

The Responsible Actors Scheme for residential property developers came into being on 21 July 2023. It is designed to bring about higher standards of fire safety within residential buildings by compelling property developers either to remedy defects in buildings they have erected or to pay to have them remedied.

## The background

The Scheme's creation came about in response to the Grenfell Tower tragedy, after which it became apparent that many other residential buildings had serious fire safety defects, in particular through inappropriate cladding materials being applied to external surfaces. The occupants of these buildings were left in the frightening position of knowing that their homes were unsafe. Those who occupied them as leaseholders were also unable to sell them while the potentially dangerous cladding remained in place.

Unfortunately, while the defects were apparent, who was responsible for fixing them was not. The official enquiry into the disaster had found it extremely difficult to determine where ultimate responsibility for the use of dangerous cladding on Grenfell Tower lay. Was it the manufacturers of the materials, the laboratories that had passed them as safe to use, the contractors who installed them, the developers who had employed them, or the building owners?

Faced with remedial work being required on many buildings across the country at huge overall cost, the government was determined that neither building occupants nor taxpayers should foot the bill. It determined that the burden of responsibility lay with the property development companies who erected the buildings in question. The Responsible Actors Scheme was created to compel developers either to carry out the required work themselves or pay to have it completed.

There were some essential preliminary steps leading to the introduction of the scheme. In 2022, 49 developers signed a pledge, drafted by the government, by which they promised to "take responsibility for performing, or...funding self-remediation and/or mitigation works to

address life-critical fire-safety issues on all our buildings of 11 metres and above in England that [they had] developed or refurbished..."

This pledge became the basis of a 'Developer Mediation Contract' which reiterated the 11 metre building height parameter and also bound developers to keep residents informed with the progress of remedial works as well as to reimburse taxpayers for any public money previously spent on remedial work.

The Responsible Actors Scheme, created as part of the Building Safety Act of 2022, is built around these pledges and contracts. Developers were invited to apply to join the scheme if they fulfilled certain criteria and had signed the pledge and developer mediation contract. For most developers, the invitation was hard to refuse: those developers who are eligible but do not join the scheme are effectively banned from handling any major development projects.

Most of the invited developers joined the Scheme within the six weeks deadline set by the government. Those that did not were probably weighing up the huge liability that would be heading their way under the terms of the scheme. The total cost of the remedial works to be covered by Scheme members was estimated by the government to be £2 billion, and some developers were, of course, liable to pay more than others because they were responsible for more of the buildings needing repair. Michael Gove, the main driver of the Scheme in his capacity as Secretary of State for Levelling Up, Housing and Communities, had no hesitation in naming and shaming the companies that hadn't signed up. Faced with the damage to their reputation and no alternative course of action, all the invited developers ended up joining scheme. As of today, there are 44 members of the Scheme.

## The scope of the Scheme

The Scheme applies only to specific developers and buildings.

In terms of developers, they are eligible if they meet certain criteria, namely:

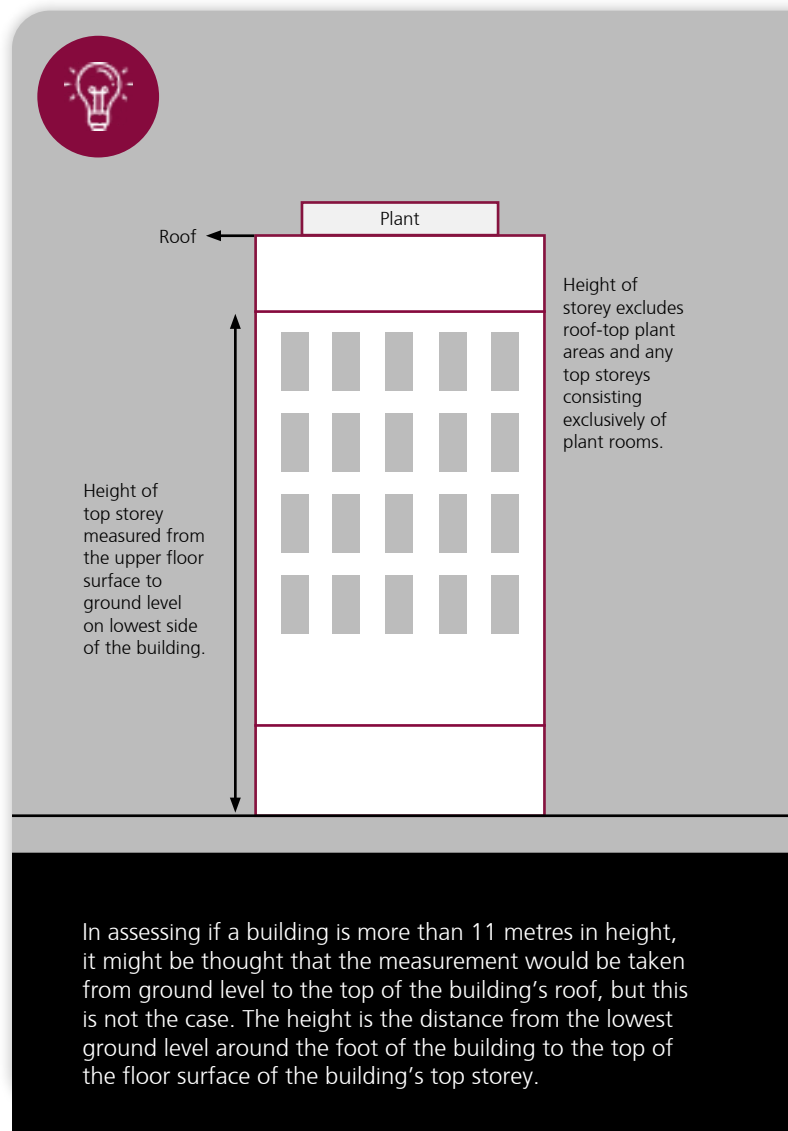
- If their principal business is residential property development and they have developed or refurbished any residential buildings over 11 metres in height in England over the 30 years ending on 4 April 2022, and made an annual average profit of £10 million or more in the 2017, 2018 and 2019 financial years;
- If they are a developer of any type of property who meets the same profit condition as above and has developed or refurbished two or more buildings that have been assessed as eligible for a relevant government cladding remediation scheme;
- They are a developer who has developed or refurbished at least one residential building over 11 metres in height that qualifies for remediation under the terms set out in the developer remediation contract, and they volunteer to sign the contract and join the Scheme.

The terms of the Scheme make developers responsible for repairs to buildings developed by other entities within their company group. There is also an overt provision that the Scheme could be extended to other (mainly smaller or less profitable) developers responsible for residential buildings over 11 metres in height at some point in the future. In fact, the Scheme contains the authority to give itself new powers as and when the government sees it as necessary.

Registered Providers of Social Housing (or wholly owned subsidiaries of them) are excluded from the scheme. This is logical, as their income is derived from a combination of tenants' rents and local and national taxation; in other words, from sources the government has determined should bear no liability for the costs of remedial works. Repairs to social housing are covered by other pieces of legislation.

The criteria for which developers are covered by the Scheme also indicate the buildings covered, namely residential properties over 11 metres in height (or of five storeys or more) that were developed

(so newly built or refurbished) in the 30 years up to 4th April 2022. (Buildings developed after this date are subject to regulations introduced under the Building Safety Act 2022, which should make them free of the defects intended to be remedied under the Responsible Actors Scheme.)



In assessing if a building is more than 11 metres in height, it might be thought that the measurement would be taken from ground level to the top of the building's roof, but this is not the case. The height is the distance from the lowest ground level around the foot of the building to the top of the floor surface of the building's top storey.



## Scheme requirements and their enforcement

Once developers are in the scheme, they must identify which of their buildings fit the criteria set, and then which of those buildings have “life-critical fire safety defects”. They must then fix those defects or pay someone else to do so on their behalf. They must also reimburse any taxpayer money previously spent on remedial work to those buildings.

As already mentioned, eligible developers who fail to join the Scheme face serious commercial consequences. These also apply to developers who have joined the Scheme but then fail to comply with its conditions. Specifically, such developers are added to a ‘prohibitions list’ and barred from carrying out ‘major development’ in England. If placed on the prohibitions list, developers must notify the relevant local authority of their prohibited status when applying for planning permission for a major development, and likewise if they acquire or transfer land with planning permission for major development.

The ‘major developments’ they are prevented from working on include schemes providing 10 or more residential units or where sites are at least 0.5 hectares in size, any type of development on sites over one hectare in size, and any commercial development creating at least 1000 square metres of floor space. As will be appreciated, the large developers eligible to join the Scheme would find their activities massively curtailed if limited to developments smaller than these parameters.

There are exceptions to these restrictions “primarily aimed at mitigating potential impact on innocent parties”. For example, developers can carry out emergency repairs to their buildings where the residents’ safety would otherwise be compromised. Critical national infrastructure projects are also excluded from the prohibitions.

A development carried out in breach of a prohibition will constitute a breach of planning control. Local authorities have been given strong powers to deal with any breaches of the Scheme that occur. If developers do not comply with orders made by the authorities, for example to cease work or restore a site to its previous condition at their own cost, they can be hit with fines that have no upper limit.



## The Scheme isn't perfect, but...

The Responsible Actors Scheme has received some criticism for the gaps it leaves. In particular, many are worried that buildings less than 11 metres high are outside its scope. The use of a profit measure within the terms of eligibility has also raised concerns that many buildings in need of remediation but developed by companies that did not meet the profit threshold in the relevant years are not covered by the scheme. Even so, the Scheme has received broad cross-party support within Parliament. Its terms have been described by both supporters and opponents as ‘draconian’, and there can be little argument with this. What really remains now is to see if it leads to the desired outcome: buildings safe for their occupants to live in.

**This, after all, is the overriding principle all of us involved in the construction industry keep at the heart of our activities.**

## Conclusion

Ultimately, fire safety is not about ticking the right boxes, it's about protecting people from harm. As we say on our website: "Achieving compliance is a necessity; improving the safety of every individual is our passion".

### Discuss your specific requirements with Rutland

Rutland provides specialist support with preparation for smoke, fire and security testing of doorsets and door assemblies. Please make contact if you would like to hear more about our support.

Call 01246 261491 or email [sales@rutland.co.uk](mailto:sales@rutland.co.uk) to start a conversation.

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