

## **Building Standards (Fire Safety) Consultation on External Wall Systems**

### **Response from Propertymark**

**October 2021**

#### **Background**

1. Propertymark is the UK's leading professional body for estate and letting agents, inventory providers, commercial agents, auctioneers and valuers, comprising nearly 18,000 members. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.

#### **Questions**

**Question 1: It is proposed to remove the words “is inhibited” in the mandatory standard which is considered to be ambiguous and replace the words with the text in bold to provide clarity of intent in the supporting guidance. Do you: Strongly agree; agree; neither agree nor disagree; disagree; or strongly disagree?**

2. Propertymark does not have sufficient expertise to respond to this question.

**Question 2.1: Do you agree with the above definition for MCM (Category 3)?**

3. Propertymark does not have sufficient expertise to respond to this question.

**Question 2.2: Do you think that the ban on MCM (Category 3) materials should be in guidance or regulation?**

4. Propertymark believes that any ban on MCM (Category 3) materials should be contained within regulation, and further explained and reiterated within guidance. This is for three principal reasons. Firstly, to align with the Scottish Government's stated approach to implementing any ban. Secondly, to avoid confusion and inadvertent breach of a ban. Thirdly, to enable effective enforcement.
5. It is important that the ban on MCM (Category 3) is stated clearly in legislation and backed-up through guidance. On its website, the Scottish Government states in its preface to this consultation that “any changes will be introduced through amendments to building regulations and supporting guidance”.<sup>1</sup> This appears to clearly set out the Scottish Government's intended process for introducing such a ban – that building regulations would be amended, and associated guidance updated – and Propertymark supports such an approach which is both transparent and robust.

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<sup>1</sup> Scottish Government, July 2021: Building Standards (Fire Safety) External Wall Systems Consultation: <https://www.gov.scot/publications/building-standards-fire-safety-consultation-external-wall-systems/>.

6. In order to avoid confusion in practice, any ban should not merely be set out in guidance. Propertymark has concerns that introducing a ban via guidance would blur the generally accepted aims of guidance and risk a ban being overlooked and breached inadvertently. The role of guidance has consistently been to provide clarity on existing regulations, rather than outline new ones. Guidance is helpful to practice but is not legally binding and thus enforcement of any breach would need to relate back to the regulation it seeks to elucidate. Though the consultation states that it can be amended more quickly than regulation, relying on guidance to impose a ban risks undermining other mechanisms of enforcement, and Propertymark believes that a ban should ultimately be brought about through law if it is to be adhered to.
7. If a ban is to be enforced, it must be set out in regulation. Propertymark does not consider that the benefit of including a ban solely within guidance on the basis of speed or practicality to be sufficient to warrant it. Failure to amend building regulations would leave the Scottish Government with no power to enforce such a rule, rendering it meaningless in practice. In drafting new regulations, consideration should be given as to whether a ban could be drafted in such a way that enabled it and/or any associated guidance to be amended easily in future in response to advances in construction methods or changes in the market. This could include provision of a sunset clause in any regulation. Given that the consultation states that there are currently no MCM products available with a thickness of more than 7mm, it would appear that the Scottish Government may have some time to properly amend building regulations to accommodate the proposed changes and update the technical guidance accordingly.

**Question 3: Which of the four options is your preferred choice?**

8. Propertymark does not have sufficient expertise to respond to this question.

**Question 4: Do you think that the current list of exemptions should be amended to include other penetrations e.g. cavity wall vents, boiler condensate pipes, drainage and overflow pipes, ventilation extract ducts, balanced flue liners etc.**

9. Propertymark does not have sufficient expertise to respond to this question.

**Question 5.1: Are there any proposals in this consultation which you consider to impact or have implications on equality groups?**

10. Propertymark does not have sufficient expertise to respond to this question.

**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?**

11. Propertymark does not have sufficient expertise to respond to this question.