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## Local Government, Housing and Planning Committee

# Stage 1 Report on Housing (Cladding Remediation) (Scotland) Bill



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# Local Government, Housing and Planning Committee

To consider and report on matters relating to local government and planning falling within the responsibility of the Cabinet Secretary for Finance and matters relating to housing and tenants' rights within the responsibility of the Cabinet Secretary for Social Justice and matters relating to the Local Government Boundary Commission and local governance review and democratic renewal within the responsibility of the Deputy First Minister.



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# Introduction

1. The Housing (Cladding Remediation) (Scotland) Bill ("the Bill") was introduced in the Parliament by the Cabinet Secretary for Social Justice on 1 November 2023 and the Local Government, Housing and Planning Committee was designated as the lead committee for consideration of the Bill at Stage 1. The Bill and its accompanying documents are available at [Housing \(Cladding Remediation\) \(Scotland\) Bill – Bills \(proposed laws\) – Scottish Parliament | Scottish Parliament Website](#)
2. Under the Parliament's Standing Orders Rule 9.6.3(a), it is for the lead committee to report to the Parliament on the general principles of the Bill. In doing so, it must take account of views submitted to it by any other committee. The lead committee is also required to report on the Financial Memorandum (FM) and Policy Memorandum, which accompany the Bill.
3. The Bill's Policy Memorandum states that "the overall policy objective of the Bill is to facilitate the delivery of the Cladding Remediation Programme. The Programme aims to safeguard residents and owners by addressing the risk to human life that is (directly or indirectly) created or exacerbated by a building's external wall cladding system, as well as the consequential negative impacts which can currently exist in relation to the buying, selling, and re-mortgaging of relevant flatted residential properties in Scotland. The Programme scope is limited to multi-residential domestic buildings which may include a commercial premises, constructed or refurbished between 1 June 1992 and 1 June 2022, 11 metres and over in height and incorporating a form of external wall cladding system."
4. Further information on the background to the Bill and the changes it seeks to implement can be found in the [SPICe Bill briefing](#).

## Call for views

5. The Committee published a call for views on the Bill on 8 November 2023, with a deadline for responses by 8 December 2023. Sixty-four responses were received from a range of stakeholders including property owners and residents, housing associations, property developers, fire safety experts, surveyors, and local authorities. All published responses can be accessed on the [Bill webpage](#).
6. The Committee would like to extend its thanks to everyone who took the time to contribute to the call for views, particularly given the short time-frame in which to respond.

## Committee consideration

7. The Scottish Government's stated ambition for the Bill is to accelerate the progress of the remediation programme. The Scottish Parliament agreed to an expedited timetable for the consideration of the Bill in order to avoid further delays to the Cladding Remediation Programme. Consequently the Committee's scrutiny of the Bill at Stage 1 has been subject to time constraints which have limited the number of evidence sessions it has been able to hold. Nonetheless the Committee has endeavoured to gather as wide a range of viewpoints as possible from across different sectors affected by the Bill.
8. The significance of the Committee affording stakeholders an opportunity to opine on the Bill was even more pronounced given that the Scottish Government did not carry out a public consultation.
9. The Committee appreciates that there was a need to proceed with the Bill quickly and notes the conversations which the Minister for Housing and his officials have recently been having with stakeholders, but, as explored in the remainder of this report, there are a number of issues that arose during the Committee's scrutiny which could have been considered and resolved prior to the introduction of the Bill if the Scottish Government had carried out a comprehensive consultation.
10. Given the limited time available for consideration of the Bill, the Committee has focussed on the Cladding Assurance Register (Part 1 of the Bill), Powers to assess and address danger (Part 2), and the Responsible Developers Scheme (Part 4). No particular concerns were raised with the Committee regarding Part 3 of the Bill which creates various offences for which senior office holders can be held responsible and accordingly the report does not consider those provisions.
11. The Committee has taken evidence from six panels of witnesses as follows:
  - 12th December 2023: Scottish Government officials
  - 23rd January 2024: Property owners and residents
  - 23rd January 2024: Property developers
  - 30th January 2024: Experts in building standards and fire safety
  - 30th January 2024: Experts on finance, legal and insurance issues
  - 6th February 2024: Scottish Government's Minister for Housing and officials
12. Further information on witnesses from whom the Committee took oral evidence can be found in Annexe A which includes links to all meeting papers and official reports.
13. The Committee is immensely grateful to all those who provided evidence on the Bill and enabled the Committee to apply detailed scrutiny to the Bill's provisions in a very short time-frame.



# Background - the Grenfell Tower tragedy and the Scottish Government's response

14. The Grenfell Tower tragedy in June 2017 claimed the lives of 72 people, when a fire broke out in a flat in the 24 storey tall residential building in West London. The building had recently had a cladding system installed, which comprised combustible foam insulation boards attached to the outside of the concrete structure. These were protected from the weather by aluminium composite material panels, the core of which was highly combustible. The fire escaped into the external envelope of the building and within a few hours it had engulfed almost the entire building.
15. A Cladding Remediation Programme has since been put in place in Scotland, aiming to remove dangerous cladding. The Bill seeks to address issues that have arisen in delivering the programme. The Scottish Government's policy memorandum accompanying the Bill explains that "Cladding refers to an external covering used on buildings. A cladding system is the whole system including external materials like cladding boards and render, the insulation, fixings, cavity barriers and fire stopping at openings and spandrel panels that form part of the external wall of the building. This generally does not include the structural wall or frame, including steel frame, concrete frame, timber frame or structural masonry. Buildings can have a range of cladding materials over the surface such as:
  - combustible metal composite cladding
  - Metal composite material (MCM)
  - Metal composite material with a polyethylene core (MCM-PE - also known as category 3 cladding for fire safety purposes)
  - Aluminium composite material with a polyethylene core (ACM-PE).<sup>i</sup>
16. In the immediate aftermath of the Grenfell Tower fire, the Scottish Government established a Ministerial Working Group on Building and Fire Safety. This stakeholder group has overseen reviews of building standards and fire safety frameworks, regulations and guidance. Key outputs have included:
  - the introduction of a statutory requirement for smoke and heat alarms to be fitted in all homes;
  - changes to fire safety related Building Standards for high-rise buildings that were agreed by the Scottish Parliament in 2022 and are now in force;
  - revised procedural guidance for building standards officers;
  - the establishment of several long-term groups/boards to consider building and fire safety issues.
17. A High-Rise Inventory (HRI) was published in summary form in November 2021.<sup>ii</sup> This reported that there were 780 high-rise buildings in Scotland (buildings with a

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<sup>i</sup> The cladding on Grenfell Tower building was ACM-PE.



## The position in Scotland

22. Before reflecting on the very significant challenges facing residents and owners of properties affected by the issue of external wall cladding at this time, it is worth noting that the scale of fire risk in Scottish homes is low. Jim McGonigal of the Institution of Fire Engineers set this out for the Committee:
- ” We have been talking about the different fire risks in buildings and what happens if we do not address those risks that are encountered in the common parts of the building, or problems with cavity barriers. The fire statistics in Scotland do not highlight a problem. Fewer than 1 per cent of fires spread beyond the flat of fire origin; since Scotland took responsibility for the fire stats, there have been no fatalities beyond the flat of fire origin; and, in the past 10 years, there has been a 57 per cent reduction in the number of fires in flats above six storeys.”<sup>vi</sup>
23. While the risk of fire might be relatively low, the issue of cladding has consumed people's lives, causing long-term worry and stress about the safety of their homes and is having a financial impact on owners who are unable to sell or remortgage their properties.
24. Of the 105 buildings within the Scottish Government's cladding remediation programme, only one has yet had any remediation works carried out, and only one has had mitigation works, although the Scottish Government has committed to ensuring that all 105 buildings are on a pathway to a single building assessment by summer 2024.<sup>vii</sup> In contrast, as of December 2023, in England 1,608 buildings (42%) have either started or completed remediation works. Of these, 797 buildings (21%) have completed remediation works.<sup>viii</sup>
25. Of the £97m so far provided by the UK Government to the Scottish Government for the purposes of cladding remediation less than £5m has been spent, although the Scottish Government has stressed that Scottish Government spend is not the only indicator of progress on remediation and protecting homeowners.<sup>ix</sup>
26. A number of respondents to the Committee's call for written views and witnesses providing oral evidence highlighted their frustration with what they see as the slow rate of progress in Scotland. In its written submission to the committee, the Mizu Tenants' Association explained that their building is described as an 'orphan' building because their developer ceased trading, and went on to say:

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vi [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

vii [Official Report \(parliament.scot\) 12 December 2023](#)

viii [Building Safety Remediation: monthly data release – December 2023 - GOV.UK \(www.gov.uk\)](#)

ix [Official Report \(parliament.scot\) 12 December 2023](#)

” ...there is very little evidence to date that “orphan” developments have made any meaningful progress with cladding remediation work. We requested that our development be allowed to join the “pilot”... but were informed this wouldn’t be possible. We have not been offered any means, support or advice to commence the process of a SBA [Single Building Assessment] despite many months of liaisons with elected politicians based in both Holyrood and Westminster.”<sup>x</sup>

27. Other witnesses had similar concerns about a lack of communication from the Scottish Government on the progress being made with the cladding remediation programme. In his evidence to the Committee, Paul Turnbull from the Owners Cladding Working Group described his personal experience:

” Our SBA was one of the first—if not the first—to be completed, in September 2022. We have had absolutely no progress since then— none at all. I hear that another building has been remediated, so it is interesting that it has progressed from an SBA to completion whereas we have seen nothing.”<sup>xi</sup>

28. In a letter to the Committee, Chris Ashurst of the High Rise Action Group provided an example of the communication challenges he has experienced:

” The Cladding Stakeholder Group has been given regular commitments from the government team since the Autumn of 2021 that effective regular communications were a priority, and that they would be implemented... Despite this, it is not happening.”<sup>xii</sup>

29. In his evidence to the Committee, the Minister for Housing acknowledged that communication issues had been raised with him, particularly by residents, and that there is a need for the Scottish Government to address this.

30. Witnesses also told the Committee about the impact of being unable to sell or remortgage their property, with banks unwilling to lend on buildings which may have potentially flammable cladding and a consequent unknown cost for possible remediation. Paul Turnbull from the Owners Cladding Working Group described people's frustrations:

” My assets have been frozen for four years so far and I see no prospect of their being released any time soon. Not even Vladimir Putin’s oligarchs have suffered that level of asset freeze. Ten per cent of our households have suffered a death in the last four years. How many more are likely to die or have life-changing events before this is sorted out? I cannot emphasise enough the sense of utter frustration with this whole event.”<sup>xiii</sup>

31. The Committee was also told by property owners and residents too about the difficulties in even insuring their homes. Property owner Perry Jenkins said:

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x [Response 633135929 to Housing \(Cladding Remediation\) \(Scotland\) Bill - Scottish Parliament - Citizen Space](#)

xi [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

xii [Correspondence from the High Rise Action Group Scotland 5 February 2024](#)

xiii [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

” There are also issues with moving, mortgaging, buying, selling and—certainly for the development in which I am an owner—insurance. For two years, the £100 million development has not been insured, and the reasons that are given for its not being insured simply do not cut the mustard.”<sup>xiv</sup>

32. In his written submission to the Committee, property owner Craig Gibson highlighted that his insurance premium had increased from £800 a year to £2,480. In addition, because he was unable to sell his property due to the lack of a Single Building Assessment being carried out, but being already committed to buying another property, he incurred the additional dwelling supplement of land and buildings transaction tax on it, without it ever being his intention to own two properties.<sup>xv</sup>
33. Where some mortgage lenders refuse to provide loans for the purchase of flats in high rise buildings, surveyors can value such properties at £0 for lending purposes. If 'cash buyers' are involved a sale is still possible because no mortgage is required, but the challenges of finding a buyer mean that flats are selling at far below their market value. That devaluation leaves many owners in negative equity and unable to repay mortgages.
34. Where remediation does happen, it can be very disruptive for residents over a significant period. Examples of this disruption given to the Committee by Stephen Andrew from Taylor Wimpey included the impact on residents of living with little natural light when there is scaffolding surrounding their building, and the difficulties of heating a property when measures are carried out such as the temporary removal of insulation. Taylor Wimpey have completed the remediation of a development built by them at Glasgow Harbour, where high risk cladding was in place. The works have taken four years to complete, remediating 321 flats.<sup>xvi</sup>
35. In his evidence to the Committee, property owner Jodi Terras described the wider implications of this situation on the 'property ecosystem' which has seen many properties removed from the property ladder in some areas, often those which would have been suitable for first-time buyers. As a result he believes developers are more reluctant to invest in big inner city developments which in turn impacts on the regeneration of key areas.

” Cladding-affected properties are predominantly two-bed city centre homes that are ideal first-time buyer properties. City of Edinburgh Council and Glasgow City Council have announced housing crises, and values and sales in these properties have flatlined, as I said, since 2018 or 2019. The only sales are cash and are discounted purchases at 60 per cent of the value, so you are seeing equity being drawn out of local communities.”<sup>xvii</sup>

36. Jodi went on to say:

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<sup>xiv</sup> [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

<sup>xv</sup> [Response 125331362 to Housing \(Cladding Remediation\) \(Scotland\) Bill - Scottish Parliament - Citizen Space](#)

<sup>xvi</sup> [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

<sup>xvii</sup> [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

” "I am starting to see a real reluctance among developers to even look forward at building developments of such scale."

37. The slow process of remediating cladding in properties thus far in Scotland led some witnesses to doubt whether the Bill will bring about any material change in the near future. In his evidence to the Committee, property owner Perry Jenkins said:

” My sense is that the bill does not deliver a sigh of relief or a fist pump. It is legalese, but it is welcome, because it talks about taking a tangible step forward towards, I hope, addressing this highly complex issue. Obviously, each development is unique in its own right, but does the bill address the key concerns of owners? Not really, until there is proof."<sup>xviii</sup>

38. Stefano Pessina from the Mizu Tenants Committee went on to say:

” There will be a lot of work to do. Who will do it all? The bill does not really reflect on when all that work will commence. It seems to lay the foundations, which is good, but 90 per cent of the work will still have to be done after that. It is a good first step but it does not feel as though it will remediate issues for owners quickly."<sup>xix</sup>

39. And resident Allan Millar questioned whether it is legislation that is needed to address the problems faced in progressing the remediation programme:

” I must have emailed the cladding team about a hundred times. My MSPs, constituency and area, have all emailed. At no point have any of the responses been that we need legislation to do X or Y. They always say, “We are trying to procure a survey” or, “We do not know”. If this legislation is to address the issues, I do not think that is what the cladding team on the ground are seeing. Otherwise they would simply say, “We need the power to do X or Y”.<sup>xx</sup>

40. The Scottish Tenants' Organisation highlighted the impact of cladding on social housing tenants, and its fears that they had been ignored in favour of property owners. Speaking on behalf of the Scottish Tenants' Organisation, Sean Clerkin told the Committee:

” All the way through, the Scottish Government's focus has always been on home owners. There has been very little focus on the safety of social tenants, who—especially in the west of Scotland—live in loads of tower blocks that have fire safety and cladding issues."<sup>xxi</sup>

41. This view was echoed in a written submission from the Scottish Federation of Housing Associations, which expressed concern that there have been inconsistencies in the treatment of social housing stock compared to other tenures.<sup>xxii</sup>

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<sup>xviii</sup> [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

<sup>xix</sup> [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

<sup>xx</sup> [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

<sup>xxi</sup> [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

<sup>xxii</sup> [SFHA Cladding Submission | Scottish Parliament Website](#)

42. The Committee would like to reiterate its gratitude to the residents and owners who have shared their experiences, which has enabled it to understand the impact which cladding has had on people's lives and put the rest of its scrutiny into context.

43. The Committee recognises that progress has been slow in addressing the delays in the remediation programme and calls on both the Scottish Government and private sector partners to make speedier progress in order to give residents in the private and social rented sectors the assurances and actions that they seek.

44. The Scottish Government will need to ensure that, going forward, it improves its communication and engagement with the full range of stakeholders about how the cladding remediation programme will be delivered. The Committee welcomes its commitment to deliver those improvements to communication and engagement and would welcome regular updates on the progress made.



# The Bill

45. The overarching purpose of the Bill is to reduce the risk to life from unsafe cladding on people's homes, by facilitating the delivery of the Scottish Government's cladding remediation programme. The Committee's scrutiny of the Bill at Stage 1 is therefore carried out through this lens, evaluating whether its provisions will have their intended effect.
46. The Bill would give the Scottish Ministers powers to identify and remediate risks to life posed by potentially flammable building cladding systems, and establish a "cladding assurance register" to hold details of cladding system surveys and remedial works. The Bill would also allow Scottish Ministers to establish a "responsible developers scheme". This would require developers of buildings clad with potentially flammable material to contribute towards any survey and remediation of buildings that they constructed. Failure to agree to such arrangements could see a developer added to a "prohibited developers list" - which would prohibit them from carrying out any development, or any class of development specified in regulations.
47. The provisions in the Bill would only apply to multi-residential domestic buildings that are 11 metres or over in height and incorporate an external wall cladding system. Buildings between 11 and 18 metres in height are referred to in Bill documentation as "mid rise", while those 18 meters plus are known as "high rise" buildings.
48. Many witnesses and respondents to the call for written views broadly welcomed the Bill as a positive step. For example Jocelyne Fleming from the Chartered Institute for Building told the Committee that "the bill is an important and welcome first step on the road to addressing Scotland's cladding issues" and the Law Society of Scotland said "We broadly consider that the structure of the Bill gives the Scottish Ministers an effective and time-efficient process to arrange for works to be carried out."
49. However these positive comments were often caveated with concerns about the lack of clarity on a number of issues which led to some people questioning how effective the proposed legislation will be in actually increasing the pace of remediation.
50. A recurring theme throughout the evidence heard by the Committee was whether the scope of the Bill extends beyond cladding remediation, and whether it is possible to separate wider fire safety issues from that of cladding. In particular, although the Scottish Government has been keen to stress that the Bill only focusses on cladding, the Single Building Assessment (SBA) which underpins the Scottish Government's cladding remediation programme goes far wider and reflects a more holistic consideration of a building. Accordingly, it is not clear what the exact extent of the Bill is.
51. This issue is discussed in more detail at paragraphs 64 to 74.
52. Before looking at the Bill's provisions in detail, the Committee would also wish to highlight in more general terms the concerns expressed to the Committee by the Law Society of Scotland about the lack of clarity in the definitions of a number of



key terms. Specifically, the Law Society of Scotland highlighted concerns about the following key terms:

- Development;
- Risk to human life;
- Undergone development
- Premises; and
- The interrelationship between “single-building assessment”, “single-building assessment report” and works.

53. The Committee raised this uncertainty about the meaning of these definitions with the Minister and his officials. Micheila West told the Committee:

” The Law Society identified a number of definitions. I should point out, in particular, that the single building assessment will be outlined in accordance with standards that are specified by ministers. In that assessment there will be scope to go into a little more detail on the phrase “risk to human life” as well as the definition of the phrase about a building that has “undergone development”, which was referred to. The assessment will produce more detail on definitions. We are also taking into account the Law Society’s other comments to see whether anything else needs to be sharpened up.”<sup>xxiii</sup>

54. The Committee notes concerns that there a number of areas of the Bill where greater clarity and further consideration would be welcomed to better achieve its aims and ensure the proposals operate effectively. The Committee wants clarity of meaning to avoid delay in the acceleration of the remediation programme. The Committee therefore welcomes that the Scottish Government is giving careful consideration to the Law Society’s suggestions and asks that the Scottish Government update the Committee on its reflections on these definitions ahead of Stage 2.

## Cladding Assurance Register

55. Part 1 of the Bill requires the Scottish Ministers to maintain a Cladding Assurance Register. Every building subject to a SBA will have an entry in the Register, which will set out the results of that assessment and any remedial work carried out. A building will only be entered into the Register once the process of remediation has been completed. It will be an offence to give false or misleading information to a person conducting an SBA or Scottish Ministers, where this information would result in an inaccurate entry in the Register, or an entry not being created where it otherwise would.
56. The Minister for Housing set out for the Committee the core purpose of the Register:

” In drafting the bill, we were mindful of the report that was produced by Dame Judith Hackitt<sup>xxiv</sup>, the chair of the independent review of building regulations and fire safety. It is important that there is a source of information about the buildings that fall within the scope of the bill. The cladding assurance register is therefore intended to reassure the public about those buildings that have been assessed and remediated under the programme.”<sup>xxv</sup>

57. The Committee heard from some witnesses that they broadly supported the principle of there being a Register of buildings which have been remediated. Gary Strong from RICS said:

” If the buildings could be put on a public register—it must be publicly accessible so that people can see the information—that would be an enormous help in keeping the industry moving. In particular, that would help the insurers, lenders and valuers, because they would not have to search around for information, which is something that can completely stall any lending, sales or purchases of properties.”<sup>xxvi</sup>

58. In its written submission to the Committee, James Gibb Residential Factors welcomed the Register:

” This is a real positive for all stakeholders involved in buildings and can access information without relying upon others to provide the data. We have been requesting a central register for a long time. For our sector it will provide a platform for accessing information when a building transfers between property management companies.”<sup>xxvii</sup>

59. However property owner Perry Jenkins was doubtful that the Register will make a material difference, telling the Committee that:

” It is distressing to hear of instances where people feel trapped after all this time, to hear of repossessions and to hear of developers not getting on board. Will anything change from the existence of a register? When you hear an anecdote such as that, for me, the answer is no.”<sup>xxviii</sup>

60. The Committee welcomes the principle of the Register. The Register can hopefully be a source of reassurance about the safety of buildings to those living in affected buildings as well as to insurers and lenders. However, the Committee considers that the Cladding Assurance Register may not fully deal with the challenges around re-mortgaging, buying, selling and insuring. Stakeholders raised a number of concerns about the efficacy of the Register, which are explored in the remainder of this section of the report.

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xxiv [Building a Safer Future: Final Report \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

xxv [Meeting of the Parliament: LGHP/06/02/2024 | Scottish Parliament Website](#)

xxvi [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

xxvii [Response 320378091 to Housing \(Cladding Remediation\) \(Scotland\) Bill - Scottish Parliament - Citizen Space](#)

xxviii [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

## The Single Building Assessment (SBA)

61. The SBA is central to the cladding remediation programme. The Bill defines an SBA as an assessment of a flatted building that stands at least 11 meters above ground level and has an external wall cladding system. The building must contain at least one dwelling and have been built between 1 June 1992 and 1 June 2022. The assessment must consider any risk to human life created or exacerbated by the cladding system and identify what work (if any) is needed to eliminate or mitigate that risk. The assessment must be conducted by a person authorised to do so by Scottish Ministers and in accordance with standards specified by Scottish Ministers.
62. SBAs were discussed extensively throughout the evidence the Committee heard. The Committee was told by a range of witnesses and in written submissions that there are a number of issues with the present SBA system, which have precipitated lengthy delays in the process, causing much frustration to owners, residents and developers. The Committee was also told that the Bill did not resolve many of the issues with the SBA.
63. Ongoing concerns about the SBA expressed to the Committee included:
- A lack of specificity for developers in what the assessments cover.
  - Use of a binary assessment of risk - classing buildings as being either 'dangerous' or 'safe' - which does not take into account the large proportion of buildings which do not present a risk to life through dangerous cladding, but are in need of maintenance (for example to repair fire doors) or other minor works and would typically be described as having 'tolerable' levels of risk.
  - The relationship between the SBA and the British Standard PAS 9980, which is already widely used to assess the fire risk of external wall cladding systems in multi-storey buildings.
  - The point at which a building should be entered onto the SBA.
  - Whether lenders and insurers will accept the conclusions of an SBA.
  - How ongoing fire safety of buildings will be monitored, given the SBA will provide an assessment at one point in time, and issues can subsequently arise through incremental changes to buildings and the need for ongoing maintenance.

These issues are all discussed in more detail below.

### Specification for the SBA

64. Developers are particularly concerned about the lack of a specification on what an SBA consists of, telling the Committee that without that specification there was too much uncertainty to enable them to proceed. The Scottish Government has carried out a pilot project of the SBA process which the Committee heard has presented challenges. Kieran Walker from Barratt Developments said in his oral evidence to the Committee that:

” ...the fundamental issue is the lack of clarity around the SBA process. We have proactively engaged with the Scottish Government over the last 18-plus months and in that time we have repeatedly asked questions about proportionality, how buildings are to be assessed, how the SBA is undertaken and what the end product of the SBA will be.”<sup>xxix</sup>

65. And Julie Jackson from Miller Homes said:

” ...we are very keen to get on with and carry out any remediation that is needed to make buildings safe. We have been very clear about that for 18 months to two years. We are... incredibly frustrated that we cannot do that because of the lack of clarity. There is no real scope for what we are expected to do and no real understanding. We would have been working on the buildings that we know have problems two or three years ago, but we have not been able to do that because we have been completely frustrated by the SBA process.”<sup>xxx</sup>

66. It was not only developers who expressed concern about the lack of clarity on what is contained in the Bill. Kate Swinburne of OFR Consultants highlighted that uncertainty too:

” For me, the question is about what we are trying to address with the bill. Are we trying to address issues with cladding only? If so, that is fine and that will be clear, but what about all the other stuff? As a fire engineer, I would not consider one issue as the whole problem. Those things are all really interlinked. The single building assessment approach speaks to that, because when you do a fire risk assessment you look at the whole building. Focusing your attention on remediating only the external wall does not make sense to me. You need to consider the building as a whole.”<sup>xxxi</sup>

67. In the absence of certainty of specification of the SBA, there were differing views on whether assessments under it should be solely focussed on cladding or whether they should involve a more holistic look at the building.

68. Mervyn Skeet from the Association of British Insurers argued for an approach focussed on a more holistic approach. He explained that insurance premiums are likely to remain high unless 'building resilience' is addressed as well as life safety.

” Yes, insurance is looking at the whole building and the potential loss of the whole building. If there are other fire safety issues in the building, not just cladding, that will impact on how insurers will look at the loss of the building—or the loss of parts of it, if it is damaged.”<sup>xxxii</sup>

69. Gary Strong of RICS also stressed the value of taking a more holistic look at buildings:

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<sup>xxix</sup> [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

<sup>xxx</sup> [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

<sup>xxxi</sup> [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

<sup>xxxii</sup> [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

” ...the bill is a good first step, but the feedback that we have had—we have been involved in the issue for the six and a half years or so since the Grenfell tower fire—is that a lot of problems have been uncovered since we started to investigate cladding as part of fire risk assessments of external walls, which now happens under PAS 9980. Those issues are not necessarily to do with the cladding or even the insulation behind it; they are to do with things such as a lack of fire stopping and cavity barriers.”<sup>xxxiii</sup>

70. John Marr of UK Finance suggested that other safety issues will arise in the course of assessments and it would be irresponsible not to remediate those issues too:

” It can be very difficult to part-fix a building. Quite often, as fire engineers and others will comment, it is when you start to strip away the cladding that you realise that there are significant and high-risk issues elsewhere. It would be, to an extent, perhaps irresponsible not to address those issues when they have become visible.”<sup>xxxiv</sup>

71. Chartered Building Surveyor Phil Diamond, however, believed that there would be merit in separating out cladding from other wider safety issues:

” We need to deal with the building holistically, but it is often different contractors that do the internal works anyway, particularly the services aspect. We tie ourselves in knots and nothing gets done because we are trying to do everything. There needs to be a way to split that process.”<sup>xxxv</sup>

72. The Minister for Housing and his officials were asked by the Committee what progress is being made in developing a specification for the SBA. The Committee was provided an assurance that a draft of the specification would be ready by Easter in 2024 which would help provide certainty to developers and others. The Minister was clear, however, that the intention of the proposal was to cover cladding issues alone.

73. The Committee notes the Scottish Government’s expressed ambition for the Bill is to address cladding issues and in so doing encourage speedier remediation. However, the Committee heard in evidence concerns about wider fire safety issues broader than cladding and would welcome a response from the Scottish Government on how it plans to tackle these issues in the future. It would appear to the Committee from the evidence it heard that the problems of obtaining building insurance and also resolving issues relating to lending and selling affected properties will persist if these wider fire safety issues are not resolved or managed.

74. The Committee would also welcome more clarity from the Scottish Government on the specification of the SBA ahead of Stage 2. The Committee believes that

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xxxiii [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

xxxiv [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

xxxv [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

without a clear specification of the SBA developers will be reluctant to commence the remediation of buildings.

### Concept of 'tolerable' risk

75. Witnesses from across different sectors were in agreement that the current options for an SBA's conclusions - essentially a building can 'pass' or 'fail' the assessment - were ineffective and would inadvertently lead to buildings without life-critical risk being classed as dangerous. The Committee heard about the concept of 'tolerable' risk for buildings which reflects that no building can ever be entirely without risk, but that mitigating actions can be taken (for example fire doors and sprinklers preventing the spread of fire). Because the SBA as it currently stands does not take account of this it may cause delays to resolving cladding remediation issues, as Fiona Kell from Homes for Scotland explained:

” If all buildings in Scotland can be only high risk or low risk, the default position is that everything will be high risk until such time as it has been further investigated and subsequently remediated. That means that, if we end up with a register, not being on that register will imply that a building is at high risk. We could have buildings that are not high risk that are not on the register because they have not yet been through the process. In effect, those buildings would be in limbo.”<sup>xxxvi</sup>

76. Jim McGonigal of the Institute of Fire Engineers set out the impact of this binary approach on people living in these buildings:

” I am not a fan of the risk ratings being only low risk or high risk, in the single building assessment. The guidance on the document says that, if anything in the building needs to be mitigated, the building is high risk. That means that the majority of buildings that will be looked at will fall into the high-risk category. Again, I note that that has an impact on the residents of those buildings, who might struggle to get insurance because their building is now regarded as high risk. There is also the impact of the fear that people feel about the idea that, from a fire safety point of view, their building is high risk. That is pretty scary.”<sup>xxxvii</sup>

77. And property owner Perry Jenkins told the Committee:

” There is an argument to ask why a traffic light system—red, amber and green—has not been introduced. Quite reasonably, amber could relate to issues that have been identified by fire experts but about which there is no need for stakeholders to take fright. Those would be perfectly mortgageable properties. The risk has not changed.”<sup>xxxviii</sup>

78. The Minister for Housing and his officials told the Committee that whilst a decision has yet to be made about levels of risk, the concept of 'tolerable risk' is under active consideration.

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<sup>xxxvi</sup> [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

<sup>xxxvii</sup> [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

<sup>xxxviii</sup> [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)



79. It is clear to the Committee that the Single Building Assessment is the foundation of the Cladding Assurance Register, however, with a binary process that does not recognise tolerable risk there is the potential to include buildings within the cladding remediation programme that are fundamentally safe, thereby exacerbating financial and practical issues for those living in those buildings. The Committee recommends that the concept of tolerable or medium risk is incorporated into assessments and welcomes that the Scottish Government is actively considering this. Confirmation of whether the Scottish Government will indeed adopt such a model would be welcomed ahead of Stage 2.

### Alignment with PAS 9980

80. The current binary approach to risk in the SBA is in contrast to that taken in PAS 9980 which is a code of practice published by the British Standards Institute for the specific appraisal of the fire risk of external wall construction and cladding on existing blocks of flats. The Committee heard from witnesses about its greater nuance and effectiveness in assessing properties, and the importance of harmonising the SBA with it. Witnesses also highlighted the clarity it provides, which is currently lacking from the SBA process.
81. Gary Strong from RICS explained that the PAS 9980 model could be adopted in Scotland:
- ” I was on the committee that developed the PAS... We were at pains, when we did so, to ensure that it was applicable north of the border—not just in England, but in Scotland, Wales and Northern Ireland—for the very reason that a fire is a fire and a building is a building, wherever it is, geographically.”<sup>xxxix</sup>
82. Kieran Walker from Barratt Developments explained in his evidence to the Committee that:
- ” We need to address the points that the developer fraternity has raised about the SBA and the potential harmonisation of PAS 9980 within the bill. Before rushing headlong into getting the bill through Parliament and on to royal assent, we need to resolve those fundamentals, which will involve adopting the concept of proportionate risk—a red, amber, green categorisation of risk—rather than doing it in reverse order and having to amend the bill accordingly.”<sup>xi</sup>
83. Julie Jackson from Miller Homes described how widely used PAS 9980 is by professionals:
- ” When we have found buildings in which things need to be done immediately, we have, like Taylor Wimpey, carried out works in accordance with PAS 9980 because we know that the fire engineers, fire safety consultants, building surveyors and cost consultants understand that. That is recognised.”<sup>xli</sup>
84. Kate Swinburne from OFR Consultants described the potential impact of not using

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<sup>xxxix</sup> [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

<sup>xi</sup> [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

<sup>xli</sup> [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

PAS 9980:

” ...there is a limited resource of competent people, and an even more limited pool of competent people in Scotland. If we have our own Scottish process or adopt a different standard, I would worry that we would exclude a big pool of competent people elsewhere in the UK who could help us with that process.”<sup>xlii</sup>

85. Jim McGonigal from the Institution of Fire Engineers noted a further issue about the implications for owners and residents of having a different assessment process in Scotland:

” ...there could be similar buildings in Newcastle and Edinburgh and the one in Edinburgh, assessed under the SBA, could be found to be high risk, while under the PAS assessment, just a moderate risk could come up for the one in Newcastle—even if there is no difference in the fire risk. Insurance and mortgages and so on are all done at a UK level, so there is the potential to confuse the market as well as the people living in the buildings.”<sup>xliii</sup>

86. In her evidence to the Committee supporting the Minister for Housing Kate Hall confirmed that technical discussions are ongoing which include consideration of PAS 9980:

” How PAS 9980 could apply in Scotland is the focus of a lot of our discussions at the moment, taking into account the tenure system and the different arrangements in relation to the wider fire safety regime. We have been listening to that call; indeed, it was part of the discussions in the task and finish group last November and December. We have been hearing from developers about the benefits of a degree of harmonisation, where possible, throughout the UK. For a start, it would support the wider supply chain and those carrying out SBAs. There is still further work to do, but PAS 9980 is certainly the current focus of our discussions in relation to the technical specification.”<sup>xliv</sup>

87. Given that PAS 9980 provides a methodology for assessing the fire risk of cladding which is widely used by professionals, and that it was explicitly designed to be applicable across the UK (albeit with some amendments), the Committee considers that there would be considerable benefits in adopting it as the basis for the SBA. It would seem to the Committee that this model would provide the certainty of specification and nuance currently missing in the SBA process. Not only that, but given its application across the UK, it would allow for surveyors and fire engineers from across the UK to undertake assessments. It appears to the Committee that adopting a uniquely Scottish approach to assessments might limit those who could undertake them and in turn reduce the speed of the remediation process. Adopting a uniquely Scottish approach unfamiliar to lenders and insurers might also impact on their confidence in offering financial products. The Committee requests clarification from the Scottish Government ahead of Stage 2 on whether it intends to use PAS 9980 and if so, how it will harmonise it with the SBA.

<sup>xlii</sup> [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

<sup>xliii</sup> [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

<sup>xliv</sup> [Meeting of the Parliament: LGHP/06/02/2024 | Scottish Parliament Website](#)



## Point of entry onto the Cladding Assurance Register

88. A further key issue raised a number of times with the Committee was about the point of time at which a building will be entered onto the Cladding Assurance Register. The Minister and his officials confirmed to the Committee that entry onto the register will only happen after remediation works have been completed. However, witnesses explained to the Committee that that could be several years after the assessment has been completed given the complexities of undertaking remediation, particularly to larger buildings. In the meantime this would not resolve the issues which cladding has caused owners and residents, and so it was suggested that a building should instead be entered onto the Register once the SBA was complete and the necessary works identified and committed to. This may give lenders and insurers confidence that plans are in place to fully remediate a building and allow them to be satisfied about the financial risk of lending or providing insurance. John Marr from UK Finance told the Committee:
- ” We have been clear that we would like to see buildings entered on the register at an earlier point in the remediation process, rather than at the conclusion. Having that up-front transparency and visibility that a building has been assessed, and that works are being programmed and will be carried out and paid for, will help the market to transact those properties sooner rather than later. If we go through a two or three-year—or however long it takes—remediation process in relation to a building and wait for all that time before saying to the market that it has been fixed and is fine, the residents in that building will probably struggle to buy, sell or remortgage their home throughout that whole time.”<sup>xlv</sup>
89. Mervyn Skeet from the Association of British Insurers agreed, saying:
- ” I would also support everything being put on the register as soon as possible. That would allow insurers to look at the remediation that has been carried out and take into account the work that has been done up front. The more transparency that we can have and the better the access to the work.”<sup>xlvi</sup>
90. Calum McQueen from chartered surveyors e.Surv echoed this sentiment:
- ” A building should be put on the register when it has been identified as one that will be fixed. Lenders will consider that information and certainly consider lending on the building.”<sup>xlvii</sup>
91. In their evidence to the Committee the Minister for Housing and his officials acknowledged that this issue has been raised with them by developers, but the Scottish Government considers that buildings cannot be deemed to be safe until remediation works are complete, and that there is a risk that remediation work may not be completed by developers as intended. They also highlighted a concern that should a building be named on the Register before remediation works are carried out it might lead to them being deliberately targeted by arsonists.

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<sup>xlv</sup> [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

<sup>xlvi</sup> [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

<sup>xlvii</sup> [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

92. The Committee considers there is a strong argument for buildings to be entered onto the Register before remediation works are completed, which would avoid further lengthy delays to resolution for property owners wanting to sell or remortgage their properties. The Committee requests that the Scottish Government considers solutions to how that could be achieved, for example through it providing guarantees to lenders or insurers that works identified as part of the cladding remediation programme will be completed.
93. While the Committee appreciates the potential risk of buildings being targeted and identified, delaying entry into the register could result in the challenges for residents and owners being prolonged for many more years. Ahead of Stage 2, the Committee would welcome further information from the Scottish Government on whether it has consulted directly with property residents and owners on whether they would like an early entry into the register, and if so what their views are.

### Distinguishing between cladding and non-cladding issues

94. The Committee also heard a suggestion from several witnesses that the Cladding Assurance Register should distinguish between life-critical remediation (the removal of dangerous cladding) and non-urgent work that may be identified by the SBA. This could for example include building maintenance issues which would not be the responsibility of the developer carrying out remediation work. Fiona Kell from Homes for Scotland explained:

” The other issue is the fact that there are cladding-related and non-cladding-related issues. There will be issues in a building that will not be the responsibility of the home builder to remediate... We might need to separate the register into two parts—a cladding register and a register for other issues. Those sorts of details need to be teased out at this stage of the legislative process, rather than being left for subsequent legislation and regulation, because they are so fundamental.”<sup>xlviii</sup>

95. Barratt Developments in its written submission explained the potential indefinite delays to a building's entry onto the Cladding Assurance Register where an SBA identifies non-cladding issues:

” ...it is our understanding that the SBA may well identify issues that are the responsibility of homeowners or factors to remediate – for example internal fire doors which have not been maintained. If all the works to a building require to be completed before they can be included on the register, then there is a risk that the more substantial cladding remediation works may have been completed but the building still not declared ‘safe’ if other works remain outstanding. A scenario where a developer has completed their obligations but failure from residents or factors to complete other works keeps the building from being able to go on the register and classed as unsafe and therefore still has issues with regards to buying/selling/insuring. With no obligation for homeowners/factors/managing agents to comply then a building could feasibly be left in limbo.”<sup>xlix</sup>

96. The Committee notes the evidence presented by stakeholders about distinguishing between cladding and non-cladding issues on the Cladding Assurance Register and would welcome the Scottish Government's response to the evidence.

### Ongoing monitoring of buildings

97. The Committee also explored with witnesses whether the Register should simply be a list of buildings that have been remediated or whether instead the Scottish Government should continue to monitor the safety of the buildings on the Register to ensure their long-term safety.

98. In his evidence to the Committee Stephen Andrew from Taylor Wimpey said:

” What happens after that? How do we ensure that the building remains safe? We differ from England in that, here, audits are not required annually, or whatever the frequency is that is applied. How do we maintain the register once the register has been set? ”<sup>i</sup>

99. A significant number of witnesses suggested that the register should be regularly updated, to provide that assurance about safety. Gary Strong of RICS emphasised this point to the Committee:

” I would say that the information in the register needs to be constantly updated—almost weekly—because the information is fast evolving: it is live. The information needs to be regularly updated because the professionals in the market who will be using it need to see that it is live and updated. That is really important.”<sup>ii</sup>

100. Kate Swinburne of OFR Consultants agreed with the principle of regular monitoring. However she and other witnesses queried whether this was in keeping with what the Bill was trying to achieve. Both Jim McGonigal and Jocelyne Fleming stressed that there needs to be clarity on the purpose of the Register, but that there would be benefits to monitoring the quality of buildings in the Register and that this could offer a means to establishing an "MOT" process for buildings such as currently does not exist in Scotland.

101. Support for the ongoing monitoring of buildings in the Register was also expressed by the ABI and UK Finance.

102. Jocelyne Fleming from the Chartered Institute for Building suggested that this was part of a much broader consideration of building safety:

” We maybe need to have a parallel discussion about the wider building safety challenges that we face in Scotland and take the cladding piece as a stand-alone first step that is part of a much larger discussion.”<sup>iii</sup>

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xlix [Response 687971283 to Housing \(Cladding Remediation\) \(Scotland\) Bill - Scottish Parliament - Citizen Space](#)

i [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

ii [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

iii [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

103. However in their evidence to the Committee, the Minister for Housing and his officials were clear that a building's entry onto the Register is seen as its exit point in the cladding remediation programme, and that it would not be used to record information about any later changes made to the building. Rachel Sunderland explained that any additional cladding would be subject to new requirements to ensure it would not pose a risk and as such there would be no need for ongoing monitoring.

104. The Committee notes that building "MOTs" are not uncommon. For example, the Committee's attention has been drawn to the approach taken in New Zealand. The issue of building MOTs has come up in the course of a number of different aspects of the Committee's work including that on Reinforced Autoclaved Aerated Concrete .

105. Whether it is appropriate for this Bill to make provision for a building MOT rests on whether the register is simply concerned with buildings with cladding or a register of the safety of these buildings more generally. While the Scottish Government has stressed that it is the former, if it is the latter then the Committee could see merit in the buildings on the Register being regularly reviewed.

106. The Committee would welcome the Scottish Government's reflections on the concept of building MOTs more generally as well as their appropriateness for this Bill.

## Powers to assess and address danger

107. Part 2 of the Bill provides the Scottish Ministers with a power to arrange remediation work identified in a SBA report as necessary to eliminate or mitigate risks to human life that are (directly or indirectly) caused by the building's external wall cladding system. Work undertaken on premises under these powers can proceed without the consent of the owner, provided that a notice period has elapsed and any appeal which may have been lodged has been determined or withdrawn.

108. The Policy Memorandum accompanying the Bill explains that the Scottish Government's experience of delivering the cladding remediation programme is that there are often practical difficulties in securing consent, especially in cases where universal consent of all owners within a building is required. It says that "some owners are not resident within the building and may therefore be difficult to identify and contact. Even once individuals are contacted there may then be challenges in securing consent... Practical experience within the Programme has shown that this is a significant barrier to delivery, delaying or even preventing work from progressing. "

109. In its evidence the Committee did not hear about widespread challenges with accessing properties to carry out remediation, but witnesses broadly supported the powers within Part 2 of the Bill. Paul Turnbull from the Owners Cladding Working

Group said they are a positive step.

” We welcome the bill, which includes a number of quite useful steps. For example, it will prevent individuals from disrupting progress that would benefit the majority, including those who might be disruptive. It will therefore increase speed... The bill will remove the ability of one person to apply a veto, which is great.”<sup>liii</sup>

110. In its written submission to the Committee, Taylor Wimpey said:

” It is our belief that it will only be in the minority of cases where necessary consents are withheld by homeowners for remediation works and this would be most likely in a scenario where the works being contemplated would place a significant financial burden on the owner, especially where these are disproportionate relative to the assessed risk.”<sup>liv</sup>

111. However the Committee did receive written submissions from property owners or residents expressing concerns about the powers and the implications of having to leave their home, such as this from Tom Runar Lauritzen:

” The fines for refusing to oblige to an evacuation order are much higher than the fines outlined for any other potential offences in this Bill. There is no mention of how residents are provided for in the case of the loss of their home, whether it be the provision of alternative accommodation or compensation for additional costs involved with relocation. Apparently the UK Bill covering the same subject matter does cover compensation to residents evacuated.”<sup>lv</sup>

112. And John Sinclair from the Law Society of Scotland raised concerns that under the draft Bill if an appeal to the sheriff against works being carried out is not determined within 21 days, that appeal is deemed to be dismissed and so an individual could in effect be deprived of their right to appeal if there is a delay in the process.

” Perhaps greater clarity on the point at which that appeal would be triggered might be one route for reducing the potential for any very late stage delay or disruption in the process.”<sup>lvi</sup>

113. The Committee supports the introduction of powers for the Scottish Government to assess and then address danger through remediation. It is clear to the Committee that these provisions respond to an issue that has in some cases been an obstacle to progressing the process of assessment and in turn remediation. The Committee would however welcome a response from the Scottish Government on how residents who are required to decant from their homes will be provided with advice and financial and practical support while remediation works are completed.

liii [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

liv [Response 531437373 to Housing \(Cladding Remediation\) \(Scotland\) Bill - Scottish Parliament - Citizen Space](#)

lv [Response 428305163 to Housing \(Cladding Remediation\) \(Scotland\) Bill - Scottish Parliament - Citizen Space](#)

lvi [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

## Responsible Developers scheme

114. Part 4 of the Bill gives the Scottish Ministers the power to establish one or more Responsible Developers Schemes, the purpose of which is to "...secure that persons in the building industry address, or contribute towards the costs of addressing, risks to human life created or exacerbated (directly or indirectly) by the external wall cladding systems of buildings that are wholly or partly residential."
115. Details about scheme membership, who should operate the scheme(s), membership charges and processes will be established in separate Regulations. Sections 21 to 24 of the Bill elaborate on the provisions that will be set out in these Regulations:
- Membership of a Scheme will be open to any developer that has a connection to a building that has problematic cladding, which is defined as being an external wall cladding system identified by a Single Building Assessment as creating or exacerbating a risk to human life and that work is required to eliminate or mitigate that risk.
  - Membership of a Scheme may include conditions requiring the carrying out of Single Building Assessments, contributing to the cost of remediation work, and providing information to Scottish Ministers and others.
  - There will be a right of appeal against decisions taken by the operator of a Scheme regarding joining, leaving or expulsion from that Scheme.
116. Regulations will allow Scheme operators to add a developer that meets the criteria for Scheme membership but choose not to join to a "prohibited developers list". A right of appeal would be created for being added to such a list. Inclusion in a list could result in:
- A developer being prohibited from carrying out any development.
  - A developer being prohibited from carrying out development of a kind specified in Regulations.
  - A local authority building standards department being prevented from awarding or amending any application for building warrant submitted by a developer on the list.
  - Any submission of a completion certificate to a local authority building standards department from a developer on the list being rejected.

### Use of secondary legislation

117. The Committee heard concerns from a number of witnesses and in written submissions about the extent to which secondary legislation will be used to set out how the Responsible Developers Scheme will operate. Cruden Investments highlight in their written submission that:



” Without any detail in the legislation that relate to the scheme criteria and necessary protections noted, it is impossible to make any linkage from its existence to expedited remediation, in fact arguably quite the reverse... There is simply too little detail of the criteria to be used for the RDS, the technical process and regulation thereof for SBA's, no wording relating to SME protections / mitigations... It is concerning that all of this detail will be left to secondary legislation which will be unlikely to receive the same level of parliamentary scrutiny.”<sup>lvii</sup>

118. Fiona Kell from Homes for Scotland echoed these concerns:

” We recognise that a number of elements of policy development can be covered by secondary legislation or future regulation. Given the scale and importance of what we are talking about, however, and the impact of primary legislation, a lot more should be set out in the primary legislation, rather than it waiting for future regulation or secondary legislation. Clarity, as has been said, around scope, treatment of SMEs, the register and the obligations of ministers could all be set out much more clearly and in detail, at this stage.”<sup>lviii</sup>

119. John Sinclair from the Law Society of Scotland also expressed concern about the absence of detail on the face of the Bill:

” On the responsible developers scheme, our comment relates to a point of principle, which is that the bill does not contain a lot of detail. For example, the nature of the connection is open-ended and is left to, I think, secondary legislation. The question was, “Do you think that the RDS will work?” The answer to that is that it is hard to say without that detail.”<sup>lix</sup>

120. Concerns were also expressed to the Committee that leaving matters to secondary legislation could result in slowing down the process. Stephen Andrew from Taylor Wimpey told the Committee that:

” What we probably need to try to do here is inject pace into the conversation. The more we can build into the bill that does not require other legislation or secondary legislation to enable progress, the better. That would be the best outcome.”<sup>lx</sup>

121. Rachel Sunderland, giving evidence in support of the Minister, said that the use of regulations will:

” ...allow us to link... to the ongoing discussions that we are having in relation to the developer remediation contract. We would expect to see very close alignment between what we agree in the developer remediation contract and the regulations. It also allows us to put a level of detail in the regulations that we would not normally expect to see in primary legislation, and to reflect back some of the other moving parts.”<sup>lxi</sup>

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lvii [Response 880097935 to Housing \(Cladding Remediation\) \(Scotland\) Bill - Scottish Parliament - Citizen Space](#)

lviii [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

lix [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

lx [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

122. The Committee recognises that the use of secondary legislation allows some flexibility in the operation of the Responsible Developers Scheme, however the lack of detail currently available creates significant concern for developers. The Committee considers that there would be merit in greater detail being included within the primary legislation in relation to the Responsible Developers Scheme. The Committee considers it necessary that appropriate parliamentary scrutiny and stakeholder engagement is given to any secondary legislation. The Committee would also welcome more clarity on how the powers will be exercised from the Scottish Government ahead of Stage 2.

### Prohibitions on developers

123. While the detail of the Responsible Developers Scheme is not completely clear, the intention is clear that if a developer eligible to join the scheme does not do so they can be prohibited from undertaking any development in Scotland.

124. Miller Homes, however, did not believe a prohibition will be proportionate in all cases and considers there may be unintended consequences for SMEs, the wider building supply chain and consequently the delivery of new housing. UK Finance similarly said:

” Policymakers and legislators should be mindful of potential unintended consequences of applying developer prohibitions, which could include delaying or stalling off-plan sales, or mortgage offers expiring depending on when and for how long a prohibition is applied.”<sup>lxii</sup>

125. New offences would be created for breaching a prohibition on undertaking development, the maximum penalties being £50,000 on summary conviction and an unlimited fine following conviction in indictment.

126. The Committee received different views on whether penalties should be imposed. In its written submission Local Authority Building Standards Scotland considered that prohibition on developers who fail to comply with the schemes would be proportionate, and RICS said:

” Unfortunately, this is a necessary step to ensure that remediation occurs, as has been seen in England & Wales”<sup>lxiii</sup>

### Impact on SMEs

127. There was considerable concern about the potential impact of requiring small to medium sized developers (referred to as SMEs) to carry out remediation work. In his written submission to the Committee John Low of Robertson Homes explained:

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<sup>lxi</sup> [Meeting of the Parliament: LGHP/06/02/2024 | Scottish Parliament Website](#)

<sup>lxii</sup> [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

<sup>lxiii</sup> [Response 616549238 to Housing \(Cladding Remediation\) \(Scotland\) Bill - Scottish Parliament - Citizen Space](#)



” The ability to fund and undertake this work is... fundamentally aligned to an individual developer’s financial resources. Notwithstanding the desire to act responsibly, large scale national developers have made commitments to remediation because they have the financial resources to do so. SME developers in Scotland have the same desire to act responsibly but have significantly different levels of resource.”<sup>lxiv</sup>

128. There were consequently a number of calls for the Responsible Developers Scheme to establish a profitability threshold for businesses, below which they would not be held liable for the costs of remediation work. A threshold has been set at £10m for SMEs in England, as Fiona Kell from Homes for Scotland explained:

” In England, a threshold was introduced, and SMEs that were under that threshold were excluded. There is no such threshold in Scotland and the bill makes no reference to any thresholds. As it stands, the bill directly puts Scottish SMEs at a much higher risk of failure than their equivalents in England, which I do not think is a proportionate response.”<sup>lxv</sup>

129. In his oral evidence to the Committee John Low of Robertson Homes went on to explain:

” ...the expectation is that we would sign up to a long-form contract to agree to remediate... The directors of an SME may well find themselves in a position in which they cannot sign up to an unquantifiable level of remediation, because most SMEs are debt funded. That might inadvertently have the impact that the business is no longer solvent.”<sup>lxvi</sup>

130. Paul Turnbull from the Owners Cladding Working Group acknowledged that smaller companies may not be able to afford the costs of remediation work:

” I get that there is no point in bankrupting companies, as they can then go on and do other good economic activity—providing that it is regulated, of course. Government funding needs to come in and the Government should step up where the developer cannot afford it. Of course, you need to challenge the developers properly and ensure that when they say, “We cannot afford this”, that is actually the case.”<sup>lxvii</sup>

131. In their evidence to the Committee, the Minister and his officials advised that it is looking closely at the positions on affordability adopted in England and Wales. Rachel Sunderland explained that in Wales smaller developers do make a contribution to remediation costs:

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lxiv [Response 33067414 to Housing \(Cladding Remediation\) \(Scotland\) Bill - Scottish Parliament - Citizen Space](#)

lxv [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

lxvi [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

lxvii [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

” That was set out in a statement to the Welsh Parliament back in November. We are looking closely at what has been done elsewhere and how we can learn from that while ensuring that our approach is appropriate to the Scottish market and context. We are considering how we balance the need to get value for money for the taxpayer with the need for financial stability for the market and individual developers.”<sup>lxviii</sup>

132. The Committee is concerned about the potential impact on SMEs and asks the Scottish Government to take this into consideration ahead of Stage 2 by assessing this risk to SMEs. While it would welcome more detail on how the Responsible Developers Scheme will operate, the Committee supports the introduction of a Responsible Developers Scheme.

### Liability for costs of remediation

133. There were also questions raised by witnesses about whether it should be solely developers who are liable for the costs of remediation, as Stephen Andrew from Taylor Wimpey described:

” one area on which the bill is fairly silent... is the other actors, such as contractors, professional consultants, architects, engineers and, in particular, material manufacturers. Where something might not have been certified, designed or constructed properly, we should all have the ability to seek recompense and contributions from those parties.”<sup>lxix</sup>

134. However John Sinclair from the Law Society of Scotland expressed doubts that this may be possible:

” If there was a failure in construction or design that resulted in a cladding being inadequate at the time that it was installed, the chances are that the developer would have a remedy against either the contractor who constructed the building or the consultant who specified the materials or monitored or supervised that. The concern is that the remedies and rights that the developer would have had, had the failure come to light earlier, would probably have expired or would be unenforceable due to, for example, prescription.”<sup>lxx</sup>

135. Giving evidence in support of the Minister, Rachel Sunderland told the Committee that the Scottish Government would continue to focus on developers' liability:

” We see developers as the primary people whom we engage with. We are mindful that the developers may well have had professional relationships with people whom they contracted to deliver services. We would see that in the first instance as being a relationship between the developer and those whom they contracted. Our focus is on the developers.”<sup>lxxi</sup>

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<sup>lxviii</sup> [Meeting of the Parliament: LGHP/06/02/2024 | Scottish Parliament Website](#)

<sup>lxix</sup> [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

<sup>lxx</sup> [Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

<sup>lxxi</sup> [Meeting of the Parliament: LGHP/06/02/2024 | Scottish Parliament Website](#)

136. The Committee appreciates the concerns expressed by developers. The Committee draws attention to the concerns of the Law Society that the Bill will place commercial pressure on developers to fund remedial works without building a coherent legal framework for distributing costs between all relevant parties. Nonetheless the Committee considers on balance that pursuing remediation through developers is the only practical means to progress the remediation programme.

## Impact and long-term implementation

137. As set out earlier, the Bill's objective is to remove the barriers that have held-up the cladding remediation programme.
138. In previous sections of this report we have explored the ways in which the Bill could be amended to provide greater clarity to assist in progressing the remediation programme.
139. However, in this section of the report we consider whether it will be practically possible to implement in a way that will significantly accelerate the pace of the programme.

### Workforce capacity to deliver remediation

140. Firstly, in order for this Bill's ambitions to be realised it is critical that there are sufficient numbers of fire engineers, surveyors and local authority building standards officers with the necessary skills to carry out SBAs, plan and undertake remediation work and process building warrants.
141. The Committee asked Scottish Government officials whether there are currently sufficient numbers of people with the necessary skills to undertake SBAs. Kate Hall told the Committee that this was not a problem in the Government's view:
- ” We have not found that to be a specific barrier to completing SBAs at this point. I would hope that our approach to SBAs will ensure that the market follows and will send out market signals so that those who are in a position to provide the services are able to do so. We are also seeking to move from a grant based process to a procurement process, and we hope that that competition will help to stimulate the market and bring additional fire engineers and others into the supply chain to support delivery of the programme as a whole.”<sup>lxxii</sup>
142. In evidence to the Committee on 6 February 2024 the Minister and his officials reiterated their confidence that there are sufficient numbers of professionals with the necessary skills to undertake SBAs.
143. However, the evidence presented to the Committee by stakeholders about the availability of people with the necessary skills to deliver an accelerated remediation programme has been less reassuring.

144. Jim McGonigal of the Institute of Fire Engineers suggested that there were not currently sufficient numbers of fire engineers in Scotland to do this work. He highlighted that this was compounded by the absence in Scotland of a course to train people to become fire engineers:
- ” You were asking how we would address the issue and whether we could get other people in and train them to be fire engineers. At the moment, that would be problematic, because Glasgow Caledonian University is ending the degree it offers in fire engineering—the course that the professionals in the fire service, building standards, fire engineers and so on will have taken. This is the last year of that course, so I am not sure where other fire engineers will come from to help to deal with this huge amount of buildings.”<sup>lxxiii</sup>
145. Gary Strong of RICS highlighted that in England the Department of Levelling-Up, Housing and Communities has recognised the insufficient number of fire engineers there and has funded training places. He noted, however, that although a RICS backed cladding safety assessment course was launched in 2021, it has been a “slow grind” to having more qualified people in place to do the work. He highlighted that although 1300 people have applied, only just over 120 have passed the course and only one person in Scotland has completed the course.
146. Jocelyne Fleming from the Chartered Institute of Building noted that in the absence of any clarity as to what qualification will be required to undertake a single building assessment it was very difficult to know which sector will be most impacted, but at the same time there are skills shortages in all of the relevant sectors and as such it will be a significant challenge to deliver regardless of which group will undertake the work.
147. Both Jim McGonigal from the Institution of Fire Engineers and Gary Strong of RICS noted that the availability of fire engineers to undertake this work is further undermined by the unwillingness of fire engineers to undertake this work for reasons including the high cost of insurance.
148. Mervyn Skeet of the ABI, however, suggested that professional indemnity insurance (PII) is still available to fire safety engineers:
- ” Certainly, PII has been affected by the Grenfell tragedy and the loss of confidence in previous building regulations. Our understanding, from talking to our members, is that PII cover remains available for people to purchase. In particular, we understand that qualified fire safety engineers are able to purchase that cover and carry out cladding inspection work. It is still available to purchase, and we understand that people are buying it, but it has been impacted by the loss of confidence due to previous regulation issues.”<sup>lxxiv</sup>
149. Kate Swinburne from OFR Consultants suggested that anyone undertaking this work needed a very specific skillset:

” I would want the person doing the PAS assessment, which is a fire safety assessment, to be a competent fire safety professional. We might take that to mean a chartered fire engineer, but it would need to be someone who is not just chartered, but has sufficient experience—as a chartered fire engineer, I would not undertake work that I do not have the experience to do. Therefore, for someone to do that work, they would have to be chartered, have the competence, be willing—not everybody wants to do external wall work and the fire safety industry is very busy—and be available. Looking ahead, we might be available in two weeks’ time or it might be 12 weeks, depending on what our current workload is, and I am sure that the situation is similar for others who work in my industry. That means that the number of people who could undertake that kind of work is quite limited. It is an issue, and one that we see in England, as well, at the moment, but I am not sure how we could address it.”<sup>lxxv</sup>

150. Al Brown of Fire Safety Expert Ltd also highlighted the importance of having people with the appropriate skill sets undertaking the work. He notes that having assessments undertaken by individuals and companies without the necessary skills will only delay the process as assessments will need to be repeated by those with the requisite skills.

151. Chartered building surveyor Phil Diamond was less concerned about the workforce capacity to deliver on the remediation programme. He contended that if you undertake a thorough triage process you will be able to understand the different levels of risk associated with each building and the level of expertise required to undertake an assessment. As such, he suggested that it would not always be necessary for a fire engineer to undertake the work. At the same time, he noted that there was a need to “build a competent army” to deliver the programme.

152. The Committee notes the confidence the Minister and his officials have expressed in the availability of surveyors and fire engineers to undertake SBAs. The evidence presented to the Committee, however, has consistently presented a picture of skills shortages in these key sectors essential to delivering the Bill’s ambitions. In the absence of a course in Scotland to train fire engineers to fill that void, it is not immediately clear how this obstacle to the acceleration of the remediation programme will be overcome. The slow progress in the number of qualified surveyors emerging from the RICS training course is also concerning as are the challenges for existing fire engineers in obtaining professional indemnity insurance.

153. For the ambitions of the Bill to be realised, the Scottish Government must make clear what qualifications are needed to undertake an assessment of a building. While the Committee is not in a position to be prescriptive on exactly who should undertake this work it is essential that assessments are undertaken to a high standard and it appears counterproductive to broaden the pool of people who can undertake the assessments if it’s likely to result in the assessments having to be

subsequently repeated by more qualified and experience individuals.

154. Having made clear what qualifications are required to undertake an assessment the Scottish Government must work with that sector to ensure it can develop a workforce of sufficient numbers and skill to deliver on the remediation programme. The Scottish Government must also work with the insurance industry to ensure that professional indemnity insurance is available to those undertaking assessments.
155. As Phil Diamond noted, it will be necessary to “build an army” to deliver on the programme and the Scottish Government must work with all of the relevant sectors to undertake this workforce planning. If cladding remediation is not to be delayed any further, then this workforce planning must begin immediately.

### **Timescales for completing remediation**

156. As part of this workforce planning exercise, the Scottish Government must also establish greater clarity about when it will complete the remediation programme.
157. The Committee explored with witnesses if there would be any value in setting out timescales for completing the remediation programme on the face of the Bill. Both Alan Millar and Stefano Pessina who live in affected buildings were strongly in favour of setting timescales on the face of the Bill given the length of time they have had to wait so far.
158. However among other witnesses there was limited support for prescribing a timescale on the face of the Bill. Perry Jenkins, another owner of a property affected by external cladding issues, was not convinced that it would be possible to prescribe a time period on the face of the Bill. Instead, he highlighted the poor level of communication and argued for improved communication from the Scottish Government on progress on SBAs and the establishment of service level agreements.
159. Amongst others Alan McAulay of Local Authority Building Standards Scotland suggested that the complexity of the remediation process meant that setting precise timescales would be very challenging and doing so may be counterproductive in creating in unrealistic expectation for those living in affected properties.
160. The Committee appreciates the complexity of delivering the remediation programme. The Committee notes the evidence provided by Stephen Andrew of Taylor Wimpey that it has taken Taylor Wimpey four years to complete the remediation of buildings at Glasgow Harbour.

161. Mindful of these complexities, the Committee agrees that it is unrealistic to set a definitive timescale for completing remediation on the face of the Bill. Nonetheless, the Committee considers that it is essential that the Scottish Government establishes an indicative timescale so that those living in affected buildings have some assurance about the timeframes in which they can expect the work to be completed in. The Scottish Government has previously committed to providing the Parliament with quarterly updates on its progress in relation to



the remediation programme. The Committee will be closely examining these updates and the extent to which this Bill has precipitated an acceleration in the delivery of the programme.

162. As stressed earlier in this report, it is also critical that the Scottish Government improves its communication with those living in affected properties to ensure that they are fully aware of what is happening with regard to their building. Developers must also improve their lines of communication. From the evidence this Committee has taken the communication by both the Scottish Government and developers has been unsatisfactory to date and a new approach must be adopted. The Committee welcomes the Minister's acknowledgement that communication needs to improve. The Committee asks that the Scottish Government provide it with an indication of what processes it is putting in place to improve communication and what it is doing to encourage developers to improve their approach to communication.

### Investment by the Scottish Government

163. To deliver on the remediation programme the Committee also heard that there will be a requirement for a significant financial investment from the Scottish Government.
164. Kate Hall, the Director of the Cladding Remediation Directorate, stressed that the greater emphasis the Scottish Government is placing on the programme can be seen in the creation of its Cladding Remediation Directorate. Moreover, she noted that the Scottish Government has this financial year invested £5 million as compared to just over £1.5 million in 2022-23 and £242,000 in 2021-22.
165. The Minister for Housing told the Committee of the Scottish Government's plans for increasing investment:
- ” The figure for 2024-25 is £41.3 million. As I said, it is very much demand led. That cost is not just remediation; there are other costs involved as well. That is the figure that has been set aside in that regard at the moment. As I say, it is very much demand led. Hopefully, if we quicken the pace, we will see where that leads us in 2024-25. It is a substantial increase on previous years, as we get more into the programme.”<sup>lxxvi</sup>
166. Fiona Kell of Homes for Scotland noted these recent improvements, but raised concerns with the Committee about the level of investment that the Scottish Government has so far committed to the programme:

” Over the past couple of years, there has been substantial underinvestment in the resourcing of the Scottish Government team, which I think is part of the reason why this has struggled to build momentum. We have seen an improvement in that resourcing in recent months, but, given the overall scale of what needs to be delivered once this moves into the operational and delivery phase, we cannot overestimate the resourcing required within the Government to deliver it. Co-ordinating all the buildings and communicating with all the residents of all those buildings is a huge and complex task that Scotland has never done before—and that the UK has never done before. We cannot overestimate the resource-intensive nature of that task...there are financial implications for Government resourcing, not just the capital expenditure.”<sup>lxxvii</sup>

167. Whilst developers will be held responsible for carrying out the remediation of buildings, this will not be the case for 'orphan buildings' where a developer can no longer be linked to a property (it may for example have gone into liquidation). The Scottish Government has committed to funding the remediation of those buildings. When giving evidence to the Committee the Minister for Housing said that he has provided assurances to residents of orphan buildings that they will not be a lower priority in the remediation programme, although he went on to say that where developers are remediating the process may be quicker:

” We gave them the reassurance that, just because it is an orphan building, it does not go to the bottom of the queue. In some ways, it is a lot easier to move forward with remediation if the developer is there and it has set aside a sum of money.”<sup>lxxviii</sup>

168. Stefano Pessina from the Mizu Tenants Committee explained their concerns about the Bill as residents in an orphan building:

” ...orphan developments that have no developers are just waiting for help, and there is no one else that can help us. No one in our development, and probably in plenty other developments, is blocking progress. We would welcome with open arms being on an SBA scheme. The bill does not seem to go quickly or far enough for orphan buildings.”<sup>lxxix</sup>

169. And Sean Clerkin from the Scottish Tenants Organisation suggested that there was already funding there that could have been invested in orphan buildings:

” ..as far as orphaned buildings and financial gaps are concerned, I would point out that there is £400 million there, but only less than 2 per cent of that money has been spent.”<sup>lxxx</sup>

170. Kieran Walker from Barratt Developments described the challenges in England and Wales in both developers and the government taking forward remediation:

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<sup>lxxvii</sup> [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

<sup>lxxviii</sup> [Meeting of the Parliament: LGHP/06/02/2024 | Scottish Parliament Website](#)

<sup>lxxix</sup> [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

<sup>lxxx</sup> [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)



- ” In England and Wales, we have experienced at times that we have been competing for the same resources as the building safety fund, which is the Government’s mechanism or delivery vehicle for setting up cladding remediation for orphan buildings. We have competed with that system when we have tried to invite tenders or to appoint engineers and assessors.”<sup>lxxxix</sup>

171. The Committee welcomes the creation of the Scottish Government's Cladding Remediation Directorate and the commitment to a demand-led increased investment in the remediation programme. Recognising the complexity of the programme, however, this will require significant long-term financing and the Committee would welcome an indication from the Scottish Government of its long-term financial planning for funding this programme.

172. Furthermore, the Committee requests an assurance from the Scottish Government that 'orphan' buildings will not be at a disadvantage in the cladding remediation programme and that it will ensure funding is made available to progress remediation for these buildings in the same way that it will be for buildings with developers.

### Responsibility for remediation

173. A number of witnesses made the point that the ongoing maintenance of a building is vital to its fire safety, but that the owners of properties bear responsibility for that rather than developers, either directly or through the factor service which they pay for. Where an SBA identifies issues which arise from maintenance rather than a building's construction a situation may arise where remediating those issues lies with property owners, as Fiona Kell from Homes for Scotland explained:

- ” For example, if the building has an alarm system that is faulty and that has not been maintained by the residents, it is clear that the remediation of that sits with the residents. What happens if the developer has completed the cladding remediation part of the work but is unable to get the building put on the register because the home owners have not completed their part of the work?”<sup>lxxxix</sup>

174. Taylor Wimpey's written submission made a similar point:

- ” Whilst the Bill is entitled ‘Cladding Remediation’, the scope of the Bill is wider than cladding, but fails to adequately specify how other non-cladding related aspects of fire safety will be dealt with, especially in the situations where those issues are the responsibility of homeowners and relate to maintenance. There is also no provision in the Bill to address the wider issue of ongoing fire safety within apartment buildings.”<sup>lxxxiii</sup>

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<sup>lxxxix</sup> [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

<sup>lxxxii</sup> [Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

<sup>lxxxiii</sup> [Response 531437373 to Housing \(Cladding Remediation\) \(Scotland\) Bill - Scottish Parliament - Citizen Space](#)

175. There is a need for greater clarity from the Scottish Government on how it will ensure that property owners and residents will not experience further delays to their buildings being declared as safe (and therefore added to the Cladding Assurance Register) due to confusion over who is responsible for works being completed. In particular the Committee requests assurances that a process will be put in place to ensure the coordination of such works including transparency with owners about the costs they will incur.

## Delegated Powers Provisions

176. The Bill contains delegated powers in respect of (a) creating a responsible developers scheme (sections 20-24) (b) changing the types of building in relation to which a single-building assessment may be carried out (section 26) (c) making ancillary provision (section 29) and (d) commencement (section 31).
177. The Delegated Powers and Law Reform Committee reported on the Bill's delegated powers provisions on 10 January 2024. The Committee was content with all of the delegated powers in the draft Bill.

# Financial Memorandum

178. The Finance and Public Administration Committee invited written evidence on the estimated financial implications of the Bill as set out in its accompanying Financial Memorandum (FM). It received six responses, from the Scottish Federation of Housing Associations, South Lanarkshire Council, the Glasgow and West of Scotland Forum of Housing Associations, Glasgow City Council, East Ayrshire Council, and Homes for Scotland.<sup>lxxxiv</sup> The Committee brought these to the attention of the Local Government, Housing and Planning Committee for its consideration during scrutiny of the Bill at Stage 1.
179. The written submissions to the Finance and Public Administration Committee raise concerns about a lack of clarity and consistency throughout the pilot of the SBA and resulting uncertainty about the implications of remediation for social landlords, local authorities, and smaller developers.

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<sup>lxxxiv</sup> [Published responses for Housing \(Cladding Remediation\) \(Scotland\) Bill: Financial Memorandum - Scottish Parliament - Citizen Space](#)

## Conclusion

180. It is now nearly seven years since the Grenfell Tower fire. It is nearly three years since the Scottish Government began the Single Building Assessment process. The Committee seeks clear timescales for remediation that give assurances to both owners and residents and the wider industry.

181. The Committee welcomes the Bill as a step toward accelerating the remediation programme and a recognition of the importance that the Scottish Government is attributing to the programme.

182. However, for the Bill to effect a meaningful improvement in the pace of the remediation programme and provide a genuine response to the challenges faced by residents and owners there are a number of ways in which the Bill must be amended.

183. Specifically, there must be greater clarity about the purpose of the Bill. Is it a Bill to respond to cladding issues or is it a wider Bill about building safety? To that end there must be clarity about what is being assessed in an SBA and consistency and certainty about how SBAs are to be undertaken.

184. The Committee heard from key stakeholders about the merits of PAS 9980 and asks the Scottish Government to explore its application in the Scottish context.

185. The Scottish Government must ensure that the Bill's provisions do not inadvertently result in an increase in delays to remediation. In particular the timing of a building's entry onto the Cladding Assurance Register should not delay resolution of the issues faced by owners and residents. The Committee notes the evidence presented by stakeholders about distinguishing between cladding and non-cladding issues on the Cladding Assurance Register and would welcome the Scottish Government's response to the evidence.

186. The Committee notes the Scottish Government's expressed ambition for the Bill to address cladding issues. The Committee asks, however, that the Scottish Government sets out how they intend to address wider building safety issues as well as how they intend to respond to long-term building maintenance issues.

187. For the ambitions of this Bill to be realised it is critical that all stakeholders should undertake effective workforce and financial planning to deliver what will be a lengthy and complex programme of remediation.

188. In undertaking this long-term financial planning it is vital that provision is made to ensure the interests of of developer-led remediation is not prioritised over 'orphan buildings' which are to be funded by the Scottish Government.

189. The Committee welcomes the Responsible Developer Scheme, but it may not be financially viable for all developers to finance remediation. The Committee is concerned about the potential impact of the Responsible Developer Scheme on SMEs and asks the Scottish Government to take this into consideration ahead of Stage 2 by assessing this risk to SMEs.

190. The Scottish Government must also effect a significant improvement in its communications with residents and owners. Residents and owners must have confidence in the process and an indication of when the remediation programme might be completed.

191. Given the significant delays in Scotland to complete cladding remediation the Committee welcomes Scottish Government's commitment to regularly report on the progress of the remediation programme.

192. The Committee looks forward to working with the Government in its efforts to deliver the remediation programme and will be closely scrutinising progress, in particular the extent to which the provisions of the Bill have engendered an acceleration in the process.

193. The Committee supports the general principles of the Bill.

# Annex A: Official Reports of relevant meetings of the Local Government, Housing and Planning Committee

## **12 December 2023: Scottish Government officials.**

Kate Hall, Director, Cladding Remediation Directorate

Rachel Sunderland, Deputy Director, Cladding Remediation Directorate

Micheila West, Solicitor, Housing Branch.

[Meeting of the Parliament: LGHP/12/12/2023 | Scottish Parliament Website](#)

## **23rd January 2024: Property owners and residents.**

David Jones, Senior Associate, Taylor and Martin and representative, Queensborough Owners and Residents Association

Chris Ashurst, Group Co-ordinator, High Rise Scotland Action Group

Sean Clerkin, Representative, Scottish Tenants Organisation

Perry Jenkins, Owner of affected property

Alan Millar, Owner of affected property

Stefano Pessina, Representative, Mizu Tenants Committee

Jodi Terras, Owner of affected property

Paul Turnbull, Representative, Cladding Working Group

[Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

## **23rd January 2024: Property developers**

Stephen Andrew, Group Technical Director, Taylor Wimpey

Julie Jackson, General Counsel and Company Director, Miller Homes

Fionna Kell, Director of Policy, Homes for Scotland

John Low, Chief Executive, Robertson Homes Ltd

Kieran Walker, Senior Technical Director, Barratt Developments plc

[Meeting of the Parliament: LGHP/23/01/2024 | Scottish Parliament Website](#)

## **30th January 2024: Experts in building standards and fire safety**

Phil Diamond, Managing Director, Diamond & Co

Jocelyne Fleming, Policy and Public Affairs Officer, Chartered Institute of Building

Alan McAulay, Building Standards Hub Pilot Director, Local Authority Building Standards Scotland (LABSS)

Jim McGonigal, President, Institution of Fire Engineers

Gary Strong, Head of Professional Practice, Royal Institution of Chartered Surveyors (RICS)

Kate Swinburne, Associate Director, OFR consultants

[Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

**30th January 2024: Experts on finance, legal and insurance issues**

John Marr, Principal, Devolved Government & Social Housing, UK Finance

Calum McQueen, Technical Surveying Manager, e.surv Chartered Surveyors

Mervyn Skeet, Director of General Insurance Policy, Association of British Insurers

John Sinclair, Convener Property Law Committee, Law Society of Scotland

[Meeting of the Parliament: LGHP/30/01/2024 | Scottish Parliament Website](#)

**6th February 2024: Scottish Government's Minister for Housing and officials**

[Meeting of the Parliament: LGHP/06/02/2024 | Scottish Parliament Website](#)



