

# **HOUSING (CLADDING REMEDIATION) (SCOTLAND) BILL**

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## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. As required under Rule 9.3.2 of the Parliament’s Standing Orders, this Financial Memorandum is published to accompany the Housing (Cladding Remediation) (Scotland) Bill introduced in the Scottish Parliament on 1 November 2023.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 36–EN);
  - a Policy Memorandum (SP Bill 36–PM);
  - a Delegated Powers Memorandum (SP Bill 36–DPM);
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 36–LC).
3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### **Policy Objectives of the Bill**

4. The purpose of the Housing (Cladding Remediation) (Scotland) Bill (‘the Bill’) is to facilitate the delivery of the Scottish Government’s Cladding Remediation Programme (‘the Programme’).
5. The Programme aims to safeguard residents and homeowners by addressing the fire safety 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 11 metres and over in height and incorporating a form of external wall cladding system.

6. The Bill will enable delivery of the Programme by:
- Requiring Scottish Ministers to establish a Cladding Assurance Register.
  - Creating powers for Ministers to enable them to arrange for Single Building Assessments (SBA) to be undertaken to assess risks in multi-residential buildings 11 metres and over in height with external wall cladding.
  - Creating powers for Ministers to arrange for remediation work, which is identified through that SBA, to be undertaken.
  - Establishing a Responsible Developers Scheme to support collaborative engagement with developers and ensure that they address, or contribute towards addressing, the costs of remediating the buildings they have developed which are within scope of the Cladding Remediation Programme

7. The Cladding Remediation Programme has been established initially in a pilot phase but with a clear commitment to expand to national delivery. SBAs for a number of buildings in the pilot phase have been commissioned and the First Minister's Mandate Letter to the Cabinet Secretary for Social Justice includes a commitment to ensure that each of the buildings already on the Pilot Programme is on an SBA pathway by Summer 2024. The Mandate Letter also includes a commitment to the stock census. The aim of the Bill is to address barriers to delivery which are slowing and impeding delivery of the Programme.

8. Scottish Ministers have clearly set out the policy position that developers should help to meet the costs of remediating buildings which they developed. Several of the largest developers have signed Developer Commitment Letters setting out their commitment in principle to identify, assess and remediate their buildings. The next stage in the process is the agreement of developer remediation contracts between the Scottish Government and developers, mirroring the approach taken by the UK and Welsh Governments in England and Wales respectively.

## **Background**

9. The Grenfell Tower fire in London in June 2017 highlighted concerns about the safety of medium and high-rise buildings with external wall cladding across the UK. The Scottish Government has taken a range of actions following the tragic events at Grenfell including changes to Scottish Fire Safety Standards in 2019, and again in 2021. Further changes to requirements on the fire safety of cladding systems were introduced in June 2022.

10. In 2021 the Ministerial Working Group on Mortgage Lending and Cladding published its final report seeking to address the difficulties faced by homeowners and residents of properties in buildings with external wall cladding. Ministers accepted the recommendation that the Scottish Government should offer and fund an SBA on a whole building basis rather than individual flats.

11. The Cladding Remediation Programme was established in 2021 to identify, assess and address - on the basis of an SBA - the fire safety risks in multi-residential domestic buildings 11 metres and over in height and incorporating a form of external wall cladding system. Ministers committed to spend all consequential funding provided by the UK Government on the Programme.

12. The Programme was initially established on a pilot basis with the intention of moving into a wider delivery approach following the completion of the pilot. The Programme is still in the pilot delivery phase. The learning from the pilot delivery phase will inform the national expansion of the Programme. This expansion is not dependent on delivery of the Bill, but the Bill will support the delivery of the Programme.

13. Shona Robison, the then Cabinet Secretary for Social Justice, Housing and Local Government made a Statement to the Scottish Parliament on 12 May 2022 providing an update on the Cladding Remediation Programme including progress on delivering SBAs. The Statement provided detail on the initial approach for the Programme which involved giving grants to homeowners, outlined spend to date and informed Parliament of the decision to alter that approach by using a direct procurement route, allowing the Scottish Government to scale up and expand the Programme. In this Statement the Cabinet Secretary referenced the £97.1 million consequential funding received from the UK Government in 2021-22 for cladding making a commitment to Parliament that the Scottish Government would spend this funding, and any further consequential funding received from the UK Government, on the Programme. During the question session following the Statement the Cabinet Secretary committed the Scottish Government to publishing information on a quarterly basis setting out spend on the Programme to date.

14. The Scottish Government publishes quarterly data on spend on the Cladding Remediation Programme in line with the request from the Parliament.

15. In addition to the Statement to Parliament the then Cabinet Secretary for Social Justice, Housing and Local Government wrote to the Convener of the Local Government, Housing and Planning Committee in March 2023 to provide an update on the Programme.<sup>1</sup> The Minister for Housing subsequently wrote to the Convener on 1 June and again on 10 July providing further updates on the Programme as well as giving evidence on progress in delivering the Programme to the Committee on 30 May 2023.<sup>2</sup>

## **COSTS ON THE SCOTTISH ADMINISTRATION**

16. This memorandum addresses the costs associated with the Bill as distinct from the costs of the Cladding Remediation Programme in Scotland. The information on costs provided is drawn from a number of sources: direct experience of running the Cladding Remediation

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<sup>1</sup> [Cladding Remediation Programme | Scottish Parliament Website](#)

<sup>2</sup> [Meeting of the Parliament: LGHP/30/05/2023 | Scottish Parliament Website](#)

Programme to date; data from equivalent Cladding Remediation Programmes in England and Wales and modelling undertaken by an external contractor.

17. The Scottish Government is commissioning a census of multi-residential domestic buildings 11 metres and over in height and incorporating a form of external wall cladding system in Scotland which will provide further detail on the scale and therefore the resourcing implications of the Programme as a whole. This census is being commissioned to provide further detail on the scope and cost of the Programme but the information it provides will also supplement the cost estimates for the Bill.

18. The contract to commission the Census will be let and preliminary information may be available in early 2024.

### **Cladding Remediation Programme Costs**

19. The Programme publishes spend data on a quarterly basis. The latest set of data [SBA programme: spending information - gov.scot \(www.gov.scot\)](http://www.gov.scot/resources/documents/2023/06/SBA_programme_spending_information_-_gov.scot) shows that the Programme has spent just over £3.6 million to the end of June 2023. These costs apply to the ongoing Programme and do not arise from the Bill.

20. The spend data published online covers 3 financial years 2021 – 2022; 2022 – 2023 and the current financial year 2023 – 2024 and is shown on a regional basis as set out in the table below.

**Table 1**

<b>Local Authority</b>	<b>FY 21-22</b>	<b>FY 22-23</b>	<b>FY 23-24</b> (To end of Q1 FY 23-24)	<b>Cumulative</b> (To end of Q1 FY 23-24)
Aberdeen	£17,700.00	£267,420.56	£295,898.40	£581,018.96
Edinburgh	£109,298.00	£172,259.40	£34,312.80	£315,870.20
Dundee	£0	£87,653.00	£0	£87,653.00
Glasgow	£114,282.00	£1,057,997.55	£1,503,790.82	£2,676,070.37
<b>Total</b>	<b>£241,280.00</b>	<b>£1,585,330.51</b>	<b>£1,834,002.02</b>	<b>£3,660,612.53</b>

21. When the Cladding Remediation Programme was first established it adopted a grant funding model. While the Programme has moved from a grant model to direct procurement, payments are still being made under the grant model. The table below shows payments made through the grant funding model. These payments are part of the £3.6m cumulative spend set out in the table above but are also broken down to show the different types of grant – to pay for the risk assessment of a building; remediation work; assurance of work that has been

undertaken or for work to address or mitigate an urgent/immediate risk which might include funding for a Waking Watch.<sup>3</sup>

22. While the grant funding model worked, it proved to be complex and slow, making significant demands on homeowners. As the Cabinet Secretary noted in her statement to Parliament it was these issues which prompted the shift to the direct procurement model, as part of the learning from the pilot phase to recognise that the grant model would not be appropriate for a national programme. The change in delivery route therefore did not result in any change in relation to the costs for different elements.

**Table 2**

<b>Grant Type</b>	<b>Area</b>	<b>Financial Year 21-22</b>	<b>Financial Year 22-23</b>	<b>Financial Year 23-24 (to end of Q1 23-24)</b>	<b>Cumulative total (to end Q1 23-24)</b>
Assessment Grant	Aberdeen	£17,700	£47,228.04	£0	£64,928.04
	Edinburgh	£109,298	£172,259.40	£34,312.80	£315,870.20
	Dundee	£0	£87,653	£0	£87,653
	Glasgow	£114,282	£347,11883	£273,212.40	£734,613.23
Waking Watch Grant	Glasgow	£0	£221,068.70	£155,594.44	£376,663.14
Remediation Grant	Aberdeen	£0	£148,000.45	£264,818.33	£412,818.78
Assurance Grant	Aberdeen	£0	£72,192.07	£31,080.07	£103,272.14
<b>Total</b>		<b>£241,280</b>	<b>£1,095,520.49</b>	<b>£848,599.04</b>	<b>£2,185,399.53</b>

23. The Cladding Remediation Programme has been transitioning to a direct procurement model issuing contracts for building assessments, remediation and mitigation work. The table below sets out the payments issued through this route. As with the grant funding this funding is a subset of the £3.6 million total cost. This route was not used in the first financial year of the Programme which rather relied on grants.

<sup>3</sup> A Waking Watch is a system whereby suitably trained individuals continually patrol all floors and the exterior of a building in order to detect a fire, raise the alarm and carry out the role of evacuation management.

**Table 3**

<b>Contract Type</b>	<b>Area</b>	<b>Financial Year 21-22</b>	<b>Financial Year 22-23</b>	<b>Financial Year 23-24 (to end of Q1 23-24)</b>	<b>Cumulative total (to end Q1 23-24)</b>
Assessment Contract	Glasgow	£0	£41,216.03	£13,528.80	£54,744.83
Fire Strategy Contract	Glasgow	£0	£11,400	£0	£11,400
Access Contract	Glasgow	£0	£17,880	£0	£17,880
Mitigation Services Contract	Glasgow	£0	£0	£481,776.27	£481,776.27
Waking Watch contract*	Glasgow	£0	£419,313.99	£490,097.91	£909,411.90
<b>Total</b>		<b>£0</b>	<b>£489,810.02</b>	<b>£985,402.98</b>	<b>£1,475,213</b>

\*Waking Watch costs for one building on the Programme will be repaid by the developer.

24. Scottish Ministers have publicly committed to spend all the consequential funding provided by the UK Government for cladding remediation, currently estimated at £400 million. The spend set out in the tables above and current planned spend is part of that consequential funding. The UK Government announced their intention to establish a Building Safety Levy in February 2021 and confirmed plans to extend the levy to cover all residential buildings in April 2022. The UK Government’s Building Safety Levy is England only in scope. The powers to create and set the terms of the Levy are set out in the Building Safety Act 2022. In November 2022 the UK Government issued a consultation seeking views on the delivery of the Levy in England including how it would work; what the rates would be; who would pay; sanctions and enforcement as well as who would be responsible for collection. Funding raised through the Building Safety Levy will help to meet the costs of fixing historic building safety defects in buildings in England and ensure that the residential development sector makes a fair contribution to costs. The UK Government have publicly stated that the intention is to raise an estimated £3 billion from the Levy.

25. In the Programme for Government published on 5 September 2023 Ministers set out their intention to seek the devolution of powers to introduce a levy, equivalent to the UK Government’s Building Safety Levy for England. The Scottish Parliament does not currently have the power to introduce a Levy and it is not included in the Bill.

26. In January 2022 Shona Robison, the then Secretary of State for Levelling Up, Housing and Communities made a statement to the House of Commons making it clear that the UK Government had already committed £5.1 billion of public funding to address life critical fire safety risks linked to unsafe cladding in England. In addition, the UK Government announced

in April 2022 that through the Developer Remediation Contract major homebuilders had pledged to commit £2 billion to fix their own buildings and the intention was to secure an estimated £3 billion from the Building Safety Levy. It is not clear whether these commitments reflect the total potential funding required to address the issue.

27. The Welsh Government has earmarked £375 million towards repairing identified building safety issues through a whole building approach to assessment. The Welsh Government have also signed Developer Remediation Contracts with major housebuilders.

28. There is potential learning from the experience of the UK and Welsh Government's about the experience and the cost of the Programmes in England and Wales respectively.

29. However, there are also distinct differences between the profile of buildings in Scotland, particularly in relation to England and in approach. Multi-residential buildings 11 metres and over in height are more likely to be located in urban areas. In England a significant proportion of buildings are located in London and the South-East. Data from the Department for Levelling Up, Housing and Communities published in 2022 estimated that almost two-thirds of mid-residential buildings in England are located in London.<sup>4</sup> Multi-residential buildings 11 metres and over are likely to be concentrated in a number of local authorities while some local authorities in Scotland are likely to have no buildings in scope of the Programme. However, given the concentration in London compared to other cities direct comparators between the number of multi-residential buildings 11 metres and over in England and Scotland may not be straightforward. The Welsh Government stated in 2020 that there were 147 high rise buildings in Wales with four or five additional high-rise buildings being built each year.

30. The UK Government is using a grant funding route, inviting applications to their Building Safety Fund or Cladding Safety Fund. The main difference between the two funds is the application criteria for buildings. Buildings outside of London over 11 metres in height fall within scope of the Cladding Safety Fund while buildings 11 metres to 18 metres in height within London also fall within the scope of the Cladding Safety Fund with those over 18 metres being within scope of the Building Safety Fund. The Welsh Government has established a Welsh Building Safety Fund for buildings over 11 metres. In Scotland the Programme was initially established on a grant funding model but given the complexities of this approach within the tenure system where there is no single building owner the Programme has shifted from a grant funding model to a direct procurement.

31. However, where it is available evidence from the Programmes in England and Wales is included in this paper.

32. The costs associated with the delivery of the Cladding Remediation Programme fall into a number of different categories: the cost of assessing risk; the cost of any urgent mitigations

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<sup>4</sup> [Department for Levelling Up, Housing and Communities: Estimating the Prevalence and Costs of external wall system life safety fire risk in mid-rise residential buildings in England, 2022](#)

to manage that risk prior to remediation and the cost of remediation. In addition, there are a number of associated costs for example the costs of engaging with residents and homeowners; costs associated with assurance of work undertaken; cost of professional advice on mitigation measures.

33. The Programme was initially established on a pilot basis with the intention of moving into a wider delivery approach following the completion of the pilot. There are currently 105 buildings within the Cladding Remediation Programme. These buildings were identified following an expressions of interest process. Initially the Scottish Government worked with a pilot of 26 buildings but in her Statement to the Parliament in May 2022 Shona Robison, the then Cabinet Secretary for Social Justice, Housing and Local Government stated that further buildings, where an expression of interest had been submitted, would be invited to join the Programme. SBAs for a number of buildings in the pilot phase have been commissioned and the First Minister’s Mandate Letter for 2023-24 to the Cabinet Secretary for Social Justice includes a commitment to ensure that each of the buildings already on the Pilot Programme is on an SBA pathway by Summer 2024. One of the buildings in the pilot is currently undergoing remediation. Information on the number of buildings in the Programme broken down by region is set out below.<sup>5</sup> At the request of homeowners and residents individual buildings are not generally identified. The costs associated with the pilot phase are all set out in the tables above. There has been no spend yet on buildings that are not part of the Pilot Programme.

**Table 4**

<b>Region</b>	<b>Buildings in Programme</b>
Central Scotland	0
Glasgow	33
Highlands and Islands	0
Lothian	62
Mid Scotland and Fife	0
North East Scotland	4
South Scotland	2
West Scotland	4
Total	105

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<sup>5</sup> [Single Building Assessment programme: spending information - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/single-building-assessment-programme/spending-information/pages/10.aspx)



34. One of the key issues is to identify numbers of potential buildings in scope of the Programme. The Scottish Government is therefore commissioning a census of multi-residential domestic buildings 11 metres and over in height and incorporating a form of external wall cladding system in Scotland which will provide further detail on the scale and therefore the resourcing implications of the Programme as a whole. The scope of the census aligns with the scope of the Programme (both in the current pilot phase and the subsequent planned national programme). Some data is already available on the potential scope of the Programme. The High-Rise Inventory data collection was undertaken by Scottish Government in August 2021 (published November 2021) using information gathered from Local Authority Building Standards departments. The data for all relevant buildings was provided or verified to the best of the respondents' knowledge at the time of completing the inventory and should be treated as a snapshot in time. It identified 780 buildings over 18 metres across Scotland.<sup>6</sup>

35. There is less data on the number of 11 to 18 metre buildings across Scotland. It is estimated that there may be around 5,000 such buildings but the census will provide improved data on these buildings. This working assessment of the number of 11 to 18 metre buildings is based on analysis of data from a number of sources including from the UK Government's analysis of the prevalence and costs of external wall system fire safety in mid-rise residential buildings published in May 2022.<sup>7</sup>

36. Work undertaken by an external consultancy for the Programme estimated that around 49% of high-rise buildings above 18m would require some level of remediation and 10% of high-rise buildings between 11 to 18 metres. These estimates would need to be refined and assessed as the Programme developed. The translation of that assessment into actual numbers of buildings to be remediated will depend on confirming the data on the number of buildings within scope of the Programme.

37. Applying these assessments to the data assumptions set out above this would suggest around 382 buildings above 18 metres requiring some level of remediation and around 500 buildings between 11 and 18 metres requiring remediation. It is important to note that the estimates of numbers of buildings potentially requiring some level of remediation should be interpreted with a high degree of caution, as they are based on estimates themselves, re the overall number of high-rise buildings above 18 metres and between 11 to 18 metres. The collection of data for the Programme will help to refine these estimates in due course.

38. The Ministerial Working Group on Mortgage Lending and Cladding brought together key partners including the Association of British Insurers, High Rise Scotland Action Group, Homes for Scotland, the Law Society of Scotland, Property Managers Association Scotland, Royal Institute of Chartered Surveyors, Scottish Fire and Rescue Service and UK Finance. That Group considered the challenge and made recommendations, including the recommendation for a consistent approach to risk assessment through an SBA. The expectation, based on the

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<sup>6</sup> [The High-Rise Inventory, Summary Report - 2021](#)

<sup>7</sup> [Estimating the prevalence and costs of external wall system life-safety fire risk in mid-rise residential buildings in England - GOV.UK \(www.gov.uk\)](#)

work undertaken by an external consultancy to the Programme, is that the majority of buildings surveyed through an SBA will be found to be safe so the number of buildings requiring remediation will be a subset of the numbers identified through the stock census.

39. The cost of an SBA will depend on the size and complexity of the buildings to be assessed. The Scottish Government has already commissioned a number of SBAs through the Programme. The cost of those assessments has ranged from approximately £20,000 to £170,000. These cost margins should be considered with a number of caveats. The SBA may identify further work which needs to be undertaken to supplement the initial assessment. If a developer undertakes an SBA on a building they developed then the cost of the SBA would fall to the developer. The process of identifying buildings within the pilot phase of the Programme, focusing initially on buildings with a known risk, means that the pilot is not necessarily representative of the wider cohort of buildings which are likely to fall within the national roll out of the Programme.

40. The SBA may identify a need for urgent interim measures to mitigate the risk in advance of the full remediation. In the two buildings so far where the Scottish Government has put in place interim measures this has included the establishment of a waking watch whereby trained individuals patrol a building 24 hours a day. The cost of a waking watch is in large part determined by the number of individuals who are required to be appointed in order to provide regular patrols across the entirety of the site. In determining the requirements for a waking watch at a specific site an assessment will be undertaken by experts. A waking watch is generally a short-term measure while other mitigations are put in place.

41. The UK Government published an analysis of waking watch costs in January 2021.<sup>8</sup> The analysis was England only and based on data collected between June and September 2020. The costs will therefore need to be updated to reflect inflation. However, the analysis of the data from 2020 found that:

- The hourly rate per person/individual undertaking Waking Watch duties ranged from £12.00 per hour to £30.00 per hour.
- The median hourly rate per person/individual undertaking Waking Watch duties was £13.99.
- The median monthly waking watch cost per building was £11,361.
- The mean monthly waking watch cost per building was £17,897.

42. The Scottish Government's experience to date is that the costs in the two buildings where a waking watch have been established have been significantly above both the median and mean costs for a waking watch. However, these buildings were both large complex sites. There is no evidence to suggest that the costs in Scotland of delivering a waking watch are significantly different to those in England. The median and mean of such costs in Scotland may

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<sup>8</sup> [Research and Analysis: Building Safety Programme: Waking Watch Costs, UK Government, 31 January 2021](#)

therefore look similar to the costs in England once a sufficient number of waking watches have been commissioned to provide an appropriate evidence base.

43. Other mitigation measures could include the installation of an integrated alarm system linking individual flats and the communal areas or construction work such as compartmentalisation; fire stopping; removal of panels. The level of mitigation required will depend on the risk assessment in individual buildings. So far we have a very limited evidence base on which to assess the average costs of such measures. The two buildings on which such work is currently being undertaken are very large and complex buildings.

44. The UK Government has established a Waking Watch Replacement Fund to install alarms and replace waking watches in residential buildings in England where a waking watch is currently in place. The Fund does not set costs for an alarm system noting that ‘each building is different and this will impact on the requirements and the cost of an alarm system’ however it does note that ‘installation costs that are above a £1500 per dwelling threshold will require additional scrutiny and may require additional evidence from the applicant to show whether the costs are necessary and reasonable’.<sup>9</sup> Data published by the UK Government<sup>10</sup> shows that as of 31 July 2023 £27.3 million of funding has been approved through the Waking Watch Relief Fund covering 468 buildings.

45. The costs of remediation for individual buildings will vary significantly depending on the risk profile of the building as well as the size and complexity. The Scottish Government is currently remediating one building as part of the pilot phase of the Programme. The costs of that are a little over £0.5 million for remediation and assurance of that remediation work. A second phase of work is required to complete the remediation work which will incur additional costs. This building is over 18 metres in height.

46. The UK Government published data in 2022 estimating the prevalence and costs of remediating fire safety risk in mid-rise buildings (11 to 18 metres) with external wall systems in England. The estimates in the publication are based on a sample of the mid-rise buildings in England and therefore there is a degree of uncertainty around the estimates.

47. The UK Government publication estimates that 9 to 11% of mid-rise residential buildings in England will require work to alleviate life safety fire risks due to their external wall systems. This aligns closely with the estimate from the Scottish Government’s external contractor that around 10% of mid-rise buildings in Scotland would require work. In the majority of such cases (84%) the UK Government estimates that this will be a full remediation. The UK Government publication estimates that the mean cost per building of fully remediating the external wall system is likely to be between £640,000 and £790,000. The mean cost per

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<sup>9</sup> [Waking Watch Replacement Fund 2023 Full Fund Application Guidance May 2023 Department for Levelling Up, Housing and Communities](#)

<sup>10</sup> [Building Safety Programme Data Release, England July 2023 Department for Levelling Up, Housing and Communities](#)

building of partial external wall system remediation was estimated as between £380,000 and £470,000. Taller buildings are likely to be more expensive to remediate than shorter buildings. The estimated mean cost per building for full external wall system remediation of 11 to 13 metre buildings is between £540,000 and £660,000 and between £750,000 and £920,000 for 14 to 18 metre buildings. This led the UK Government to estimate a total cost of between £3.1 billion to £5.3 billion to remediate, partially remediate and mitigate the fire safety risk for mid rise residential buildings in England. The cost of remediating buildings over 18 metres is likely to be higher given the evidence that taller buildings are more expensive.

48. It is possible to draw some parallels from this cost data to the cost of remediating buildings in Scotland. There are factors influencing these costs including building standards, both those in place in England and Scotland at the time that any building was originally constructed and those in place when the remediation work is undertaken. The costs focus on remediation of the external wall system and there is also likely to be costs for internal remediation works. There is a limited evidence base of actual remediation costs in Scotland. However, the main elements of the costs of remediation are likely to be broadly similar in Scotland and England meaning that this information provides useful evidence on the costs for remediating mid-rise buildings in Scotland.

49. The costs related to the Programme and to all of the provisions of this Bill, with the exception of a small ongoing administration cost related to the Cladding Assurance Register, are time limited. The timeframe for the delivery of the Programme and thereby the costs will be influenced by the information provided through the stock census on the number and risk profile of buildings in scope of the Programme. However, the expectation is that the Programme and the costs are likely to focus on the next 5 to 10 years. This timeframe reflects analysis within the Programme and evidence from cladding remediation programmes in England and Wales.

### **Cladding Assurance Register**

50. The costs associated with the Cladding Assurance Register arise from its set up and ongoing administration. These costs will be embedded within the Programme since the information required to populate the Register will arise from the wider Programme. There is likely to be a small staff resource required to establish and ensure maintenance of the Register. Initially, the costs for one C1 and one B3 post are expected to be £80,257 and £61,816 respectively, based on 2022-23 figures. These staff costs are expected to reduce once the Register is established.

## **Single-building assessment**

51. Scottish Ministers have already publicly committed to the provision of funding for SBAs of buildings within scope of the Cladding Remediation Programme.<sup>11</sup> The full costs for SBAs do not arise from the Bill provisions. However, information on the costs of an SBA have been included in paragraph 39. This commitment was set out in general terms in the Scottish Government's response to the recommendation for a SBA from the Ministerial Working Group on Mortgage Lending and Cladding and reiterated subsequently, including in the Cabinet Secretary for Social Justice, Housing and Local Government's statement to Parliament in May 2022.

52. A Ministerial Group on Building and Fire Safety was established in June 2017 to oversee reviews of building and fire safety frameworks, regulations, guidance and any other relevant matters. In March 2020 Ministers agreed to set up a technical Working Group to develop a Scottish Advice Note to consider the fire risk posed by external wall systems in multi-story residential buildings. A draft Scottish Advice Note was published in July 2020 and undertook a targeted consultation on the Advice Note. Following the consultation period, the Scottish Advice Note: Determining the fire risk posed by external wall systems in existing multi-story residential buildings was published in August 2021. An updated version of the Scottish Advice Note was published on the Scottish Government's website in December 2022.<sup>12</sup>

53. Annex 5 of the Scottish Advice Note provides a guide to the practical assessment of external wall systems as part of an SBA and provides good practice principles and examples. Engagement with partners suggests that there would be a clear benefit in providing further technical detail on SBAs.

54. Work to provide further technical detail on SBAs is therefore already being taken forward as part of the Cladding Remediation Programme.

## **Powers to Address Danger**

55. The main cost arising from ministerial powers to assess and address danger relates to the administration of communications with homeowners and residents, including provision of notices of intention to undertake work.

56. The Bill makes the provision of such information a requirement. At the moment the Cladding Remediation Programme relies on the consent of homeowners. There is therefore

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<sup>11</sup> The Programme currently comprises a Pilot of 105 buildings, however, the intention is to move beyond this Pilot phase to identify, assess and address fire safety risks associated with external wall cladding systems in multi-occupancy residential buildings over 11 meters in height. Information on the buildings currently in the Pilot phase is set out in broad terms [Single Building Assessment programme: spending information - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/single-building-assessment-programme/spending-information/pages/2-1-introduction.aspx)

<sup>12</sup> [Introduction - External wall systems in existing multi-storey residential buildings - fire risk: advice note - version 2 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/introduction-external-wall-systems-in-existing-multi-storey-residential-buildings-fire-risk-advice-note-version-2/pages/2-1-introduction.aspx)

already significant investment in communication and engagement within the Programme and the resource required to deliver the consent provisions in the Bill will not require additional communication and engagement capacity beyond that already in place within the Programme. The experience to date is that the main costs are related to preparing letters and communications and engaging with residents' committees and groups. The costs associated with the actual dissemination of information has been minimal. The main costs are therefore likely to be staff costs to draft letters and engage with homeowners and residents.

57. These costs include a B3 post focused on communications linked to buildings in urgent interim measuring as well as some input from a C1 leading on urgent interim measures. The average cost of a B3 post is £61,816, based on 2022-23 figures while 50% of a C1 based on average costs would be £40,129. In addition, a C1 customer support role; a further B3 customer support role and 2 A4 customer support roles would be focused on wider engagement with residents and homeowners. The average cost for one C1, one B3 and two A4 posts are expected to be £80,257, £61,816 and £69,440 (£34,720 per A4) again based on 2022-23 figures. While it might be expected that the number of individuals working on communication and engagement would need to increase in line with an increase in the number of buildings in the Programme as part of the move from the pilot phase to full national delivery this should be balanced by the fact that as the Programme progresses there will be more potential to rely on established templates and approaches.

58. The current reliance on the consent of homeowners, which is at times delayed or unobtainable for a variety of reasons,<sup>13</sup> means that these provisions will significantly reduce the delay in carrying out scheduled assessment and remediation work and therefore are likely to reduce the cost of remediation.

59. Additional administrative costs may arise from the right of appeal to the sheriff court against the exercise of these powers. These are not expected to be considerable as there is little financial incentive to object to the use of the powers as homeowners are not typically asked to contribute financially to the costs of remediation. Where the powers are used due to a lack of engagement this is unlikely to generate opposition to the extent that an appeal is lodged. There may be more likely to be appeals against more significant interventions such as any requirement to remove residents. However, this will only be used in circumstances where there is a substantial risk to life.

60. Broadly speaking, there will always be a focus on reducing the number of appeals through proactive engagement with homeowners and residents. Stakeholder engagement has shown that homeowners are broadly supportive of remediation and the means of accelerating progress.

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<sup>13</sup> Specifically in cases where it is not possible to secure consent either because of owner absence, lack of engagement, or a reluctance on the part of a minority of owners to allow work to proceed

## **Responsible Developers Scheme**

61. The costs associated with the Responsible Developers Scheme arise primarily out of the administrative costs of the scheme (costs in relation to local government and developers are set out below).

62. The precise savings to the public purse will depend on the number of buildings identified as falling within scope and the exact terms of the Scottish Government Developer Remediation contracts agreed with developers. The basis for the contract will be the Scottish Safer Buildings Accord, Developer Commitment Letters and the contracts that developers have already signed with the UK Government and the Welsh Government. The UK Government have estimated that their individual contracts with 35 developers are likely to lead to additional contribution of £2 billion to address cladding remediation.

63. The Responsible Developers Scheme seeks to support collaborative working with developers who have signed Scottish Government Developer Remediation contracts and committed to remediate their buildings and encouraging others to do likewise. The costs to individual developers will depend on the number of their buildings within scope of the Programme and the level of remediation required for each of those buildings. A number of larger developers have already undertaken some work to scope their expected commitments and have set aside funding at a UK level to remediate buildings with potentially unsafe cladding. In April 2022 Taylor Wimpey confirmed that they had committed around £245 million to fire safety remediation works. Persimmon Homes have publicly stated that they have set aside funding of £75m for remediation work. These figures are UK rather than Scottish specific.

64. The UK Government's Developer Remediation Contract sets out the details of what developers will fund when remediating buildings in England. Negotiations on the Scottish Government's Developer Remediation Contract will confirm the details of what developers will fund in Scotland. However, several developers have signed Developer Commitment letters committing in principle to funding the remediation of their buildings in Scotland.

65. Developers who have signed the UK Government's Developer Remediation Contract have agreed to pay remediation costs to mitigate or remediate defects, any costs associated with any requirement to decant residents, costs of any professional advisers and the costs of obtaining any planning, building control or other statutory or regulatory permissions, consents or approvals. The UK Government's Developer Remediation Contract does not assign costs associated with Waking Watches or alarms to the developer.

66. The Scottish Government publishes cost information on spend on the Programme to date. Detail on this spend data has been outlined earlier in the paper.

67. The exact details of the Responsible Developers Scheme will be provided through regulation and reflect the Scottish Government's Developer Remediation Contract.



68. The UK Government's Responsible Actors Scheme launched in July 2023. The primary legislation to establish the Responsible Actors Scheme, which is England only in scope, was set through the Building Safety Act 2022 followed by the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023. As of 21 September 2023, 37 developers have joined the Responsible Actors Scheme.<sup>14</sup>

69. The detailed provisions for the Responsible Developers Scheme, and therefore the associated costs, will reflect engagement with developers. However, the UK Government has already been through the process of engagement with developers including agreeing the terms of a Developer Remediation Contract; laying of regulations and their Scheme is now operational. There are likely to be similarities in potential costs between the two Schemes although also some differences linked to any differences in contract, different planning systems and scale.

70. However, the UK Government undertook and published an economic impact assessment of the Responsible Actors Scheme<sup>15</sup> to accompany the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023. This noted that the best estimate of costs were likely to be familiarisation costs which would be borne by local authorities, private building control inspectors and developers as they read documentation, complete administrative work and train staff (estimated at around £218,000 and split between local authorities (£107,300) private inspectors (£69,900) and developers (£40,900)). Monitoring costs were likely to be borne by Local Authorities and private building control inspectors and were estimated as a total of £671,000 (£241,700 of those costs falling to private inspectors). There was likely to be a small monitoring cost on central Government, but this was not quantified as it related to staff costs already in place in the Department. In addition, in a high-cost scenario there may be a cost to developers linked to the cost of delay in development caused by the prohibitions which was costed as £117 million. These costs would only be incurred if the prohibitions were utilised. These are all England only costs and relate to the Responsible Actors Scheme.

71. The UK Government also noted that the Responsible Actors Scheme reduces the risk that developers will delay remediation or fail to remediate entirely. This benefits the general taxpayer and the wider industry who would otherwise bear the cost for cladding defects through government remediation schemes and the Building Safety Levy. Creating certainty and a standardised set of obligations backed by the Responsible Actors Scheme and prohibitions was expected to reduce the prospect of disputes between developers and government, reducing legal and other costs associated with such disputes. These benefits as with the costs currently relate to England only and the Responsible Actors Scheme.

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<sup>14</sup> Responsible Actors Scheme: Members List [Responsible Actors Scheme: members list - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/responsible-actors-scheme-members-list)

<sup>15</sup> [Impact assessment: Building Safety \(Responsible Actors Scheme and Prohibitions\) Regulations 2023](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/114444/Impact-assessment-Building-Safety-Responsible-Actors-Scheme-and-Prohibitions-Regulations-2023.pdf)



72. Detailed information on the specific costs reflecting the detail of the Responsible Developers Scheme will be provided when the regulations are brought forward. However, the figures from the Responsible Actors Scheme provide a useful estimate of potential costs.

73. The total costs of the Programme in any given year for the Scottish Government are likely to include staffing costs (including the costs for individuals undertaking communication and engagement work and the staff costs associated with the Cladding Assurance Register; costs of SBAs; costs of commissioning any urgent interim mitigating measures; and, remediation costs for orphan buildings without a linked developer).

74. In developer linked buildings the costs of mitigating measures and remediation will fall to the developer.

**Table 5**

<b>Estimated indicative range of remediation costs</b>	
Communication and engagement staff costs	313,458
Cladding Assurance Register Staff costs	£142,073
Mitigating measures – waking watch	£11,361 - £17,897 (median and mean waking watch costs from England only data) per building
Cost of Single Building Assessment	£20,000 to £170,000 per building depending on the complexity and size of the building
Cost of remediation	<p>£540,000 - £600,000 estimated mean cost per building based on England only data (11 to 13m)</p> <p>£750,000 - £920,000 estimated mean cost per building based on England only data (14-18m)</p> <p>Cost of remediating buildings above 18m likely to be higher</p>

## **COSTS TO LOCAL AUTHORITIES**

75. The Responsible Developers Scheme is likely to engage with local authorities' responsibilities if an eligible developer does not comply with the conditions and is therefore prohibited from development. Breach of the planning prohibition will be treated as a breach of planning regulations. The local authority will be asked to use their planning enforcement function against the breach including 'stop notices' and engaging the authority of the court to make an unlimited fine. The exact provisions of the Responsible Developers Scheme will be set out in regulations, and we are committed to engaging with local government in drafting those regulations to minimise any burden. It is not considered likely that an eligible developer will deliberately breach a prohibition as there is potentially considerable cost to them both financially and reputationally. Therefore, this is unlikely to increase enforcement activity to any considerable extent and there are not likely to be significant additional costs apart from the cost of awareness of the regulations. The UK Government has estimated that the cost to local authorities of awareness raising of the regulations associated with their Responsible Actors Scheme as £107,300 and the cost on local authorities of monitoring the prohibitions as £429,300. This is based on 333 local authorities in England. The costs are likely to be more significant for authorities with significant levels of development.

## **COSTS TO OTHER BODIES, INDIVIDUALS AND BUSINESSES**

76. The provisions in relation to SBAs, consent (assessment and remediation of danger) and the Responsible Developers Scheme could impact on developer costs. In relation to SBA, Scottish Ministers have committed to the provision of a publicly funded SBAs. However, some developers have indicated that they would like to undertake assessments of their buildings within scope of the Programme. Information on the costs of an SBA are set out earlier in the paper. The costs on developers who wish to undertake an SBA may be slightly lower depending on the approach that they take given existing contracts. The Bill does not compel developers to undertake assessments of their buildings. However, if developers wanted to take the responsibility of assessing their buildings then they would need to use an SBA if they wanted their building to be included on the Register or to rely on Ministerial powers to enable them to undertake work in cases where they have been unable to secure consent. Requiring assessments undertaken on buildings to be undertaken in line with SBAs may also be one of the conditions of membership of the Responsible Developers Scheme.

77. The SBA identifies the risks and issues within a building and therefore sets the scope, and cost, for any remediation. There may therefore be a significant cost for developers depending on the standards and detail included within the SBA. These details will be specified by Ministers and will be subject to engagement with the sector. The costs to developers will also be determined according to the number of buildings they developed which fall within scope of the Programme. Scottish Ministers have been clear that developers linked to buildings with problematic cladding should fund the remediation of those buildings. Developers who have signed the Developer Commitment Letter have accepted that this includes buildings that they built, developed or refurbished as principals (but not as contractor) or by a joint venture or corporate vehicle in which they had a relevant interest as a partner or shareholder. The other

provisions which have a potential impact on developers are those relating to the Responsible Developers Scheme. The details of the scheme criteria and conditions will be set out in regulations. However, there will be similarities with the costs on developers identified by the UK Government for the Responsible Actors Scheme. These costs are likely to include the cost to developers of familiarising themselves with the regulations which the UK Government have assessed as £40,900.

78. The main potential costs for developers associated with the Responsible Developers Scheme relate to a scenario in which a developer interacts with the prohibitions in the Scheme. The UK Government has assessed the impact of developer interactions with the prohibitions in the Responsible Actors Scheme as £117,299,800 linked to a delay in development. There would also be likely to be reputational damage any developer subject to a prohibition. No developer has yet been subject to prohibition through the Responsible Actors Scheme. The policy intention behind the Responsible Developers Scheme is to secure an agreement with developers through the negotiations on the Scottish Safer Buildings Developer Remediation Contract so that the prohibitions are not engaged.

79. Nine developers have already set out their commitment in principle through the Developer Commitment Letter to remediate their buildings. Details of those developers as well as the text of the Developer Commitment Letter is published on the Scottish Government website.<sup>16</sup>

80. The actual parameters of the costs that will fall on developers will be set out in the Scottish Safer Buildings Developer Remediation Contract which will be negotiated between developers and Scottish Ministers. The costs to individual developers will depend on how many, if any, buildings with potentially unsafe cladding they have developed within Scotland and the scale of remediation or mitigation likely to be required for each of those buildings.

81. The UK Government's Developer Remediation Contract<sup>17</sup> requires developers to identify and assess buildings that they developed which may have potentially unsafe cladding. It also requires them to carry out and complete works identified through assessment to ensure that defects are remediated and/or fully mitigated. The costs associated with these works include all reasonable and properly incurred costs arising from:

- Carry out and completing the works and subsequently remedying all snagging items and defects arising from that work;
- Arranging access to the building;
- Any cost overruns that relate to the carrying out and completion of the works;
- moving residents out of the building requiring work where reasonably considered necessary;
- costs of any professional advisers that may need to be appointed; and,

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<sup>16</sup> [Scottish Safer Buildings Accord: developer commitment letter - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>17</sup> [Developer remediation contract \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

- costs of obtaining any planning, building control or other statutory or regulatory permissions, consents and approvals required.

82. The UK Government's Developer Remediation Contract specifically excludes the cost of interim safety measures such as waking watch costs and alarm upgrades; increases in buildings insurance premiums and leaseholder compensations unless expressly provided for elsewhere in the contract. There are likely to be some differences between the UK Government's Developer Remediation Contract, which reflects the Leasehold arrangements in England and the Scottish Safer Buildings Developer Remediation Contract. However, these exact details are the subject of ongoing negotiations between developers and the Scottish Government. The UK Government has estimated that the total cost to the sector of the Developer Remediation Contract is £2 billion.

83. There will be consequences for those developers who meet the Responsible Developers Scheme criteria but who do not remediate their buildings. This is in line with the policy commitment that developers should help to meet the costs of remediating buildings that they developed.

84. It is not anticipated that there will be considerable additional costs to the Scottish Courts and Tribunal Service in connection with the Cladding Remediation Powers. The Bill will introduce the following:

- An offence of providing false or misleading information to ministers that is likely to result in an inaccurate or false entry in the Cladding Assurance Register, or to a person carrying out an SBA which results in an inaccurate or false entry in the Register.
- An offence of failing without reasonable excuse to provide information which is required either for carrying out an SBA or for the maintenance of the Cladding Assurance Register.
- An offence of occupying premises after being required to evacuate.
- An offence of obstruction of assessment or remediation work without reasonable excuse.
- An offence of failing to assist with assessment or remediation work when on premises or as the owner of a premises, without reasonable excuse.
- An offence of withholding required information or providing false information to the Scottish Ministers, that affects notice being given to occupiers or owners of premises.
- A right of appeal upon notice against the carrying out of arranged remediation work.

85. Regulations in respect of the Responsible Developers Scheme may include the following:

- Right of appeal concerning membership of Responsible Developers Scheme.
- Right of appeal concerning loss of membership of Responsible Developers Scheme.

86. It is anticipated that there may be a small number of such cases going to the sheriff court. Scottish Ministers are committed to work collaboratively with homeowners and residents to secure their consent on a voluntary basis. Given that the aim of the Programme is to address life critical fire safety issues, as well as the resultant cost implications linked to mortgages and insurance, the number of individuals likely to appeal is considered to be low.

87. The SCTS have calculated that the cost of each appeal by way of a summary application which is determined without a full hearing would be the region of £138 per appeal. Where a statutory appeal is opposed costs will depend on the length of the full hearing and would be in the region of £1,375 per appeal per day.

**Table A\***

<b>Item</b>	<b>Cost (£)</b>
Lodging statutory appeal by initial writ.	138
Lodging answers to an initial writ.	138
Lodging of a written motion or minute and the lodging of any written opposition to any such motion or minute.	53
Fixing, allocating or assigning of a proof, a debate or a hearing in a summary or miscellaneous application on the merits of the cause.	59
For each day or part thereof of proof, debate or hearing in a summary or miscellaneous application on the merits of the cause (NOTE: not payable if the proof, debate or hearing does not proceed on that day).	251

\*[Schedule 2](#) of the [Sheriff Court Fees Order 2022](#) with effect from 1 April 2023.

*This document relates to the Housing (Cladding Remediation) (Scotland) Bill (SP Bill 36) as introduced in the Scottish Parliament on 1 November 2023*

# **HOUSING (CLADDING REMEDIATION) (SCOTLAND) BILL**

## **FINANCIAL MEMORANDUM**

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