

HOUSING (CLADDING REMEDIATION) (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. As required under Rule 9.3.3 of the Parliament’s Standing Orders, this Policy 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 Financial Memorandum (SP Bill 36–FM);
 - 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. The contents of this Memorandum are entirely the responsibility of the Scottish Government. It does not form part of the Bill and has not been endorsed by the Scottish 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 Cladding Remediation Programme.¹
5. 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.

¹ [Cladding - Building standards - gov.scot \(www.gov.scot\)](https://www.gov.scot/topics/building-standards)

6. The Bill will enable delivery of the Programme by:
- a) Requiring Ministers to establish a Cladding Assurance Register containing information on buildings which have been through a Single Building Assessment and any required remediation.
 - b) Creating powers for Ministers to enable them to arrange for Single Building Assessments to be undertaken to assess risks in buildings within scope of the Programme. The Bill defines the meaning of a Single Building Assessment and allows Ministers to specify the standards against which such an assessment should be undertaken.
 - c) Creating powers for Ministers to arrange for remediation work, which is identified through that Single Building Assessment, to be undertaken. This will include in urgent cases where the risk is immediate as well as a power to require occupants to evacuate buildings.
 - d) Creating powers for Ministers to require information from a person to allow them to carry out a Single Building Assessment or maintain the Cladding Assurance Register.
 - e) 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 Programme.
7. The powers of remediation and the power to carry out a Single Building Assessment in the Bill can be utilised without the consent of owners where appropriate notice has been given, or if the work is urgent, where notice has been given as permitted by the circumstances.

BACKGROUND AND CONTEXT

8. 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 then again in 2021. Changes to the requirements on the fire safety of cladding systems were introduced in June 2022, including banning highly combustible metal composite material panels on all buildings and a ban on combustible external wall cladding systems of residential and high-risk buildings over 11 metres.

9. 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 spandrel² 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;

² <https://www.designingbuildings.co.uk/wiki/Spandrel>

- 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). Grenfell Tower building was ACM-PE.

10. In Spring 2020 Scottish Ministers established the Ministerial Working Group on Mortgage Lending and Cladding (the “Working Group”) specifically to address the difficulties faced by owners and residents of properties in buildings with external wall cladding. Owners and residents were reporting challenges in re-mortgaging, buying, selling, and insuring properties with external wall cladding systems. The Working Group published its final report and recommendations in March 2021. Ministers accepted the recommendation from the Working Group that the Scottish Government should offer and fund a Single Building Assessment on a whole building basis rather than individual flats. The Single Building Assessment was designed to be an assessment of both the internal fire risk and the risk of fire relating to external cladding or wall systems.

11. The Scottish Government’s Cladding Remediation Programme was established to identify, assess, through a Single Building Assessment, and address the safety risks for buildings within scope (as defined at paragraph 5). Similar remediation programmes have been established by the UK and Welsh Governments. Scottish Ministers have publicly committed to spend all consequential funding provided by the UK Government for cladding remediation.

12. 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. The UK Government have publicly stated that the intention is to raise an estimated £3 billion from the Levy.

13. 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 therefore included in the Bill.

14. In order to better define the scale of the Programme, the Scottish Government is commissioning a Stock Survey of all medium and high-rise buildings within Programme scope. In the interim, the Scottish Government has used other relevant data which is available to provide estimates of the number of buildings within scope. 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.

15. There is less data on the number of 11 to 18 metres buildings across Scotland. The Scottish Government estimates 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 11-18m 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 June 2021.³

16. In August 2021 the Scottish Government established the Programme to take forward the recommendations of the Working Group. This includes the Single Building Assessment Pilot Program, securing the Scottish Safer Buildings Accord and carrying out the Stock Census.

17. As work in assessing and remediating buildings has progressed, issues have been identified which are impacting on the delivery of the overall Programme. The aim of the Bill is to address these, thereby facilitating the delivery of the Cladding Remediation Programme.

WHAT THE BILL DOES – SPECIFIC PROVISIONS

Cladding Assurance Register (Sections 1-2)

Policy Objective

18. Owners and residents of properties in buildings with potentially unsafe cladding have been reporting challenges in re-mortgaging, buying, selling, and insuring their properties. In relation to insurance for example these issues may range from significant cost increases to an inability to secure insurance on their property.

19. In 2020 the Working Group was established bringing together relevant public, private, professional, and commercial interests with a remit to identify the issues facing owners and residents and develop solutions. The Working Group recommended⁴ that better information should be made publicly available, for example through a database or portal on the safety profile of domestic properties with cladding. The Scottish Government accepted this recommendation.

20. Information on the safety profile of buildings which had been assessed and had undergone remediation to address any issues identified through that assessment process would be helpful to owners and residents seeking to secure mortgages or insurance. It would also be an important resource for lenders and insurance providers in providing information about the safety status of a building. This was seen as an important step in enabling owners and residents of remediated buildings to access insurance and mortgages.

21. The UK Government commissioned an independent review of fire safety regulations following the Grenfell Tower tragedy. The report which was undertaken by Dame Judith Hackitt

³ [Estimating the prevalence and costs of external wall system life-safety fire risk in mid-rise residential buildings in England \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100000/estimating-the-prevalence-and-costs-of-external-wall-system-life-safety-fire-risk-in-mid-rise-residential-buildings-in-england.pdf)

⁴ [ministerial-working-group-mortgage-lending-cladding-report.pdf \(www.gov.scot\)](https://www.gov.scot/publications/ministerial-working-group-mortgage-lending-cladding-report/pages/1-2-1-cladding-assurance-register.aspx)

focused on regulations in England although she drew attention to the different regime in Scotland and some of the issues that she identified have a wider relevance. The published report entitled *Building a Safer Future: Final Report*⁵ highlighted the importance of maintaining information about the built environment, particularly high-risk buildings. Gathering and publishing data on Single Building Assessments and any remediation undertaken to address identified risks will provide a golden thread of information identified as key within the report.

The Register

22. The Bill provides powers to allow Ministers to create a Cladding Assurance Register (the “Register”). This will be a record of the condition of buildings following the completion of a Single Building Assessment and any required remediation. The Bill states that the Register must include information on when a Single Building Assessment was undertaken on the building; what work, if any, the Single Building Assessment indicated needed to be carried out to eliminate or mitigate the risk and the date on which Scottish Ministers were satisfied that these works had been completed. Scottish Ministers may include any other information on the Register that they consider appropriate. The Working Group recommended that Single Building Assessments should be used to build a reliable source of information and the Bill reflects that recommendation.

23. It is the intention that the Register is publicly accessible to allow those who need to access the information it contains to do so, although Ministers could apply a charge for those accessing the information.

24. In order for the Register to fulfil the policy objective, it is essential that it contains reliable and accurate information. The Bill therefore enables Ministers to amend an entry in the Register if they consider it to be inaccurate. It also creates an offence if an individual gives information to Scottish Ministers, or to a person carrying out a Single Building Assessment, which they know, or ought to know, to be false or misleading, which is likely to result in a material inaccuracy in an entry in the Register.

25. Inclusion in the Register will provide an important end point for individual buildings within the Programme. It will provide certainty and clarity for owners and residents and help to address the challenges that have emerged in relation to the re-mortgaging, selling, purchase and insurance of buildings.

Single Building Assessments (Sections 3 – 5 and Part 5 Sections 25 and 26)

Policy Objective

26. The Royal Institute of Chartered Surveyors (RICS), UK Finance and the Building Societies Association developed the EWS (External Wall System) process in 2019.⁶ This provided a way for those selling properties in buildings with external wall systems to show that those systems have been assessed by an expert. The Working Group considered the EWS process as part of their

⁵ [Building a Safer Future: Final Report \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

⁶ [Cladding External Wall System \(EWS\) FAQs \(rics.org\)](https://www.rics.org)

consideration of the challenges facing owners and residents and heard evidence from owners, professionals, surveyors, and lenders.

27. In their report the Working Group identified issues with the EWS process including the lack of a single assessment per building. The Working Group noted consequently that a single assessment for an entire building is desirable and in the public interest, recognising the importance of setting the specification for such a single assessment and recommending the provision of Scottish Government funding for these to be undertaken. The Working Group published its final report and recommendations in March 2021⁷ and Ministers accepted all the Working Group's recommendations.

28. A Single Building Assessment per building approach reduces the burden and cost on owners and residents of funding individual assessments for their properties and provides a consistent set of information on the risk profile of buildings. This is advantageous to owners and residents who can be confident that the assessment of their building is a comprehensive risk assessment identifying all issues and required remediation actions to mitigate risk. This consistent approach is also important to lenders and financial institutions in giving them the reassurance they require.

29. Individuals undertaking a Single Building Assessment are likely to require access to the premises to undertake the assessment. The assessment can be an intrusive survey requiring access to the structure of the building and potentially the removal and testing of materials. Assessors should consider all evidence to inform their risk assessment and may require access to information about the building, the materials or the original plans for the building.

30. The consent of owners may therefore be required to undertake a Single Building Assessment. A Single Building Assessment is an essential first step to assessing the safety risk and any required work required to mitigate that risk. Ministers have committed that Single Building Assessments will be delivered at no cost to owners and residents. However, there is still a concern, supported by evidence from the Programme, that difficulties in securing consent may delay delivery of assessment and therefore the safeguarding of residents.

31. Developers and other partners may elect to undertake Single Building Assessments on their buildings.

Powers to Assess Danger (Sections 3 – 5)

32. Section 3 of the Bill gives Ministers the power to arrange a Single Building Assessment of a building with subsection 3 requiring Ministers to provide notice of the assessment to the owner and occupier. Section 3(2) provides that Ministers may not arrange for the work for a Single Building Assessment to be undertaken on premises without the consent of the owner(s) unless the

⁷ [Ministerial Working Group on Mortgage Lending and Cladding: report - March 2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2021/03/Ministerial-Working-Group-on-Mortgage-Lending-and-Cladding-report-March-2021.pdf)

notice period referred to above has expired. Following the expiry of the notice period Ministers can arrange for a Single Building Assessment to be carried out without the consent of an owner.

33. Section 4 of the Bill gives Ministers the power to require information from any person which may be reasonably required for either the carrying out of a Single Building Assessment or for the maintenance of the Cladding Assurance Register. Ministers are required to give written notice to an individual setting out the information, which is to be supplied, the form in which it is to be supplied, the date on or by which it is to be supplied and why it is required. A person is not obliged to provide information that a person would be entitled to refuse to provide in proceedings in a court in Scotland.

34. Section 5 of the Bill sets out that a person commits an offence if they fail to provide information in relation to section 4 without reasonable excuse, with the penalty for non-compliance being a fine not exceeding level 3 on the standard scale.

Single Building Assessment – Definition and Standards (Part 5)

Background

35. A Single Building Assessment is an assessment undertaken on a whole building basis incorporating an assessment of the external wall system for the whole building as well as an internal fire risk assessment. A Single Building Assessment will identify life critical safety risks and any mitigation or remediation which is required to mitigate those risks and is carried out by qualified specialists.

36. 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 group to develop a Scottish Advice Note⁸ to consider the fire risk posed by external wall systems in multi-storey residential buildings. A draft Scottish Advice Note⁹ was published in July 2020 and Scottish Government undertook a targeted consultation¹⁰ on the Advice Note. Following the consultation period, the Scottish Advice Note: Determining the fire risk posed by external wall systems in existing multi-storey residential buildings was published in August 2021. An updated version of the Scottish Advice Note¹¹ was published on the Scottish Government website in December 2022.

37. Annex 5 of the Scottish Advice Note provides a guide to the practical assessment of external wall systems as part of a Single Building Assessment and provides good practice principles and examples. The independent analysis of consultation responses¹² on the draft Scottish

⁸ [External wall systems advice - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/external-wall-systems-advice/pages/introduction.aspx)

⁹ [External wall systems: draft advice note - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/external-wall-systems-draft-advice-note/pages/introduction.aspx)

¹⁰ [Scottish Advice Note: Determining the fire risk posed by external wall systems in existing multi-storey residential buildings: Background Note, Consultation Questions and Response Form \(www.gov.scot\)](https://www.gov.scot/publications/scottish-advice-note-determining-the-fire-risk-posed-by-external-wall-systems-in-existing-multi-storey-residential-buildings/pages/background-note-consultation-questions-and-response-form.aspx)

¹¹ [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/external-wall-systems-in-existing-multi-storey-residential-buildings-fire-risk-advice-note-version-2/pages/introduction.aspx)

¹² [Multi-storey residential buildings - fire risk posed by external wall systems: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/multi-storey-residential-buildings-fire-risk-posed-by-external-wall-systems-consultation-analysis/pages/introduction.aspx)

Advice Note published in February 2021 noted that the main theme that emerged from the consultation was that the Advice note was ‘welcomed’, ‘helpful’, ‘useful’ and a ‘positive step’. The main comments seeking changes, specifically in relation to the sections on fire risk assessment were a desire for greater clarity with a need for clearer definitions of terms used. These comments did inform the drafting of the updated version of the Scottish Advice Note, however, engagement with partners¹³ suggests that there would be a clear benefit in providing further technical detail and guidance on the Single Building Assessments.

Single Building Assessment – Definition

38. Section 25 of the Bill defines the meaning of a Single Building Assessment noting that a Single Building Assessment is an assessment of a flatted building as defined in section 16(4) of the Land Registration etc (Scotland) Act 2012 which contains at least one domestic flat, is 11 meters¹⁴ or more above the ground, was constructed or developed between 1 June 1992 and 1 June 2022 and has an external wall cladding system. The Cladding remediation programmes in England, Wales, Northern Ireland and Scotland have all adopted a consistent approach with a focus on buildings 11 metres or more in height. This reflects a risk-based approach based on the height of the building separated into two groups: 11 to 18 metres and 18 metres and above. June 2022 is the cut-off date referenced in The Building (Scotland) Amendment Regulations 2022 wherein which the Scottish Ministers addressed the quality of Cladding building materials and banned the use of flammable cladding.

39. The definition set out in the Bill aligns with the scope of the Programme and reflects the objective of the Bill in facilitating delivery of it.

40. A Single Building Assessment would assess the risk to life directly or indirectly created or exacerbated by the building’s external wall cladding system and identify what work, if any, needs to be undertaken to mitigate that risk. The experience from the Programme indicates that in some instances the Single Building Assessment may identify a risk which requires urgent action to be taken to mitigate that risk.

41. The Bill will enable Ministers to specify the standard of the Single Building Assessment and publish updated standards. We intend to consult with stakeholders and partners, including technical experts, and build on the experience of the Programme to date as well as the existing Scottish Advice Note in defining these standards.

42. Section 26 of the Bill would allow Ministers to change by Regulation the type of buildings in relation to which a Single Building Assessment may be undertaken provided that those buildings have an external wall cladding system and that they contain a dwelling. There is currently no policy

¹³ Developers and Homes for Scotland have asked for further detail on Single Building Assessments

¹⁴ Assessments carried out by the UK Government have shown that there is no systemic fire safety issue in buildings below 11 metres. The fire safety risk for these buildings is far lower than those in taller buildings, and where there are concerns identified these low-rise buildings need little or no remediation to make them safe. [Building safety: remediation and funding - government response to the Select Committee reports - GOV.UK \(www.gov.uk\)](#)

intention to change the definition but as the Programme develops further information may arise in relation to risk which could require a change in the type of building within scope.

Powers to Address Danger (Sections 6 – 9)

Policy Objective

43. The Cladding Remediation Programme is already underway and is currently assessing and addressing life critical fire safety risks. Single Building Assessments are being undertaken and remediation work has started. There are currently 105 buildings in the pilot phase of the Programme and there the First Minister’s Mandate letter includes a commitment that each of the buildings already on the pilot programme will be on a Single Building Assessment pathway by Summer 2024. As the Programme has progressed, instances have arisen where work needs to be undertaken to an expedited timescale to put in place urgent interim measures to address an urgent life critical fire safety risk. The consent of owners is generally required to undertake work. The level of consent required will vary according to the level of work required, the location of that work (in common areas or individual dwellings) and the title deeds of the building.

44. The experience of the Programme, and the experience of partners, is that there are often practical difficulties in securing consent, notably in cases where universal consent is required. 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.

45. There is a clear commitment to work in partnership with owners and residents, seeking to secure consent to any work undertaken. However, once all reasonable attempts to secure consent have been undertaken it is important that life critical fire safety work can be undertaken to ensure that the risk to life is identified, assessed, and mitigated appropriately. Practical experience within the Programme has shown that this is a significant barrier to delivery, delaying or even preventing work from progressing. Some of the examples referenced are drawn from the experience of Scottish Government and/or developers in seeking to address the risks of potentially unsafe cladding. In one building concern from a resident has delayed progress in developing remediation plans for some months; in another building difficulties in contacting non-resident owners has significantly delayed the installation of an integrated alarm system. The Programme is focused on addressing life critical fire safety risks and therefore any delays in assessing or remediating buildings means that those risks cannot be mitigated resulting in an ongoing collective risk to residents.

46. If an inability to secure consent delayed or prevented life critical fire safety works from being undertaken and a fire were to break out then there would potentially be a high risk of casualties. However, the risk of an uncontrolled fire is not always understood or acknowledged as an imminent risk which can introduce challenges in securing consent from individuals.

47. The type of work which could be undertaken and for which the consent of owners may be required includes undertaking a Single Building Assessment, where that assessment may require intrusive work such as the removal of cladding for testing; work to address an urgent life critical

fire risk which could include removal and replacement of cladding; removal and replacement of supporting structures for cladding; work to ensure appropriate fire compartmentalisation; installation of fire alarms or other structural work required to address an identified fire safety risk. The work which is required will be identified through the Single Building Assessment.

48. The link to the Single Building Assessment provides reassurance to residents that there is a clear basis to any work which is required.

Power to Arrange Work

49. Section 6 of the Bill provides Ministers with a power to arrange remediation work where work has been identified in a Single Building Assessment report as being needed to eliminate or mitigate risks to human life that are directly or indirectly created or exacerbated by the building's external wall cladding system. Work undertaken on premises under this section can proceed without consent of the owner provided that the notice period specified in subsection 3 has elapsed and any appeal which may have been lodged has been determined or withdrawn.

50. Ministers must provide owners with a notice under section 6 that they have arranged for work to be undertaken. Section 10 of the Bill provides owners with a right of appeal to the Sheriff. An appeal must be brought within 21 days. Outwith this period an appeal can only be brought with the Sheriff's permission on cause shown.

51. Section 7 of the Bill provides Ministers with a power to arrange for urgent remediation work to be carried out in circumstances where the risk to human life is so immediate that it would be inappropriate to delay the work by arranging for it to be carried out under section 6 of the Bill. The risk would need to be identified through a Single Building Assessment or by the person undertaking that Single Building Assessment.

52. Ministers are required to provide notice to affected owners to the extent the circumstances permit under subsection 2 of section 7.

53. The experience of the Programme to date has demonstrated that there is also a requirement for a power to allow for the implementation of temporary measures to remove or address an immediate risk in a building. This might include closing a car park or part of a building or removal of combustible material. The Scottish Advice Note published in December 2022 provides further information on types of temporary measures which may be required.

54. These powers could be exercised by Scottish Ministers to undertake work on buildings. Provided that a Single Building Assessment had been undertaken in line with the specification, they could also support the delivery of work by partners, including where appropriate developers, to undertake the required work and safeguard residents.

55. In relation to the provisions of the Bill regarding the consent of owners and residents there is a policy intention to seek to work collaboratively with owners and residents and to communicate the evidence base and requirement for any work to be undertaken. The methods used for this could include direct correspondence delivered by the remediating party to e-mail addresses and directly to individual flats. In buildings where work has been undertaken letters have been e-mailed to

residents via the factor, letters have been posted through letter boxes and copies have been placed in communal areas. There would therefore be a need to engage with the factors and any residents committee to provide information to residents and to engage them in the process, including utilising any existing communication methods within buildings. Experience suggests that there may be specific challenges in contacting non-resident owners.

56. Section 8 of the Bill provides Ministers with a power to evacuate residents from a building if it is the opinion of Ministers that there is a substantial risk to the lives of the residents. This risk must be linked, directly or indirectly, to the external wall cladding system of a building that is undergoing or has undergone a Single Building Assessment. Ministers may also require residents to evacuate a building if their opinion is that the occupants would be endangered by any work which would be required under section 6 or section 7 of the Bill.

57. Residents must be informed of the requirement to evacuate. In relation to risks identified through a Single Building Assessment this requirement may be imposed by informing residents of that need verbally or by giving them written notice. In relation to a requirement to evacuate because of the risk arising from planned work then the occupants must be notified in writing and be given a 14-day period to evacuate. The Scottish Government is in the process of negotiating a Scottish Safer Buildings Developer Remediation Contract with developers which will cover the key issues of costs of assessment, remediation and mitigation of buildings in scope of the Programme. In the UK Government's Developer Remediation Contract¹⁵ developers have committed to meeting the costs of moving residents out of buildings where it is considered necessary to do so.

58. Section 9 of the Bill sets out that a person commits an offence if they occupy premises when forbidden to do so and may be liable on summary conviction to a fine not exceeding level 5 on the standard scale and/or a term of imprisonment not exceeding 3 months.

59. In considering the range of measures which may be required the Scottish Government has also considered the experience in England and Wales where cladding remediation programmes have been established. In England there have been instances where the level of risk identified has been such that residents have needed to be removed from the building for their own safety until the risk has been remediated. Removal of residents would always be a last resort and the focus would be on identifying any mitigating measures which would allow residents to remain in their homes. However, there may be instances where the level of risk is such that it would be necessary to evacuate a building.

Appeals (Section 10)

60. Section 10 of the Bill provides details of the right of appeal against arranged remediation work. The details of that appeal process are set out in the relevant section.

¹⁵ [Developer remediation contract \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

Carrying out Assessments and Works (Sections 11 -14)

61. Sections 11 to 14 of the Bill include a series of measures to facilitate the undertaking of any assessment or remediation work. Section 11 provides for a power of entry which allows individuals undertaking work to enter premises for the purposes of undertaking that assessment or work and do anything reasonably required to carry out that assessment or work. It also provides for them to take any necessary equipment or persons onto the premises for the purposes of undertaking the required work or assessment as well as, removing things from the premises and retaining them until claimed by the rightful owner. This entry should be at a reasonable time of day and only after notice has been provided to the occupants.

62. If entry to premises is refused section 12 allows a person to apply for a warrant authorising them to use reasonable force to enter a premise, in accordance with the terms of the warrant. An application for a warrant may only be made by Scottish Ministers.

63. Sections 13 and 14 of the Bill create offences in relation to obstructing the work of someone undertaking an assessment or remediation work. Section 13 refers to the intentional obstruction of such persons and states that a person who commits such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

64. Section 14 refers to failing to provide requested on-site assistance or information to a person on premises carrying out a Single Building Assessment or work and states that a person who commits such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Provisions to support undertaking of work (Sections 15 – 17)

65. Section 15 of the Bill relates to the power to obtain information to enable Scottish Ministers to give notice to occupiers or owners of premises. A requirement to provide information is imposed upon a person by the Scottish Ministers providing notice of the information required and the deadline for the provision of that information. An individual who is given such a requirement and fails to provide the information without a reasonable excuse, or who knowingly or recklessly provides false or misleading information, commits an offence and is liable on summary conviction of a fine not exceeding level 2 on the standard scale.

66. Section 16 of the Bill involves the provision of notice where a recipient's address is unknown. If Ministers are required under the Bill to give notice to a person and in circumstances where, despite having made reasonable enquiries, they cannot ascertain a person's proper address then notice may be deemed to have been given if Ministers cause a written notice to be displayed on or near the premises.

67. Section 17 states that where a notice is given under this part of the Bill, it will be deemed to have been received after 48 hours of it being sent.

Responsible Developers Scheme (RDS) (Sections 20 – 24)

Policy Objective

68. Scottish Ministers have been clear that developers must play their part in making buildings safe and the Scottish Government would expect developers to similarly commit to identifying, assessing, and remediating buildings in Scotland as they have done in Wales and England. Ministers have confirmed this position in Parliament. In a statement to Parliament on 12 May 2022, Shona Robinson, the then Cabinet Secretary for Social Justice, Housing and Local Government stated:

‘It is my clear expectation that developers linked to buildings with problematic cladding will fund remediation where this is identified. This will ensure that when public funds are needed to be spent, we can use them to focus on buildings and works where a developer cannot be identified, or no parent developer exists.’

69. Scottish Ministers made a commitment to work collaboratively with Homes for Scotland and the sector to secure an agreement from developers to remediate their buildings. However, Ministers were explicit that they reserved the right to legislate if necessary to ensure that developers did meet their responsibilities and remediated their buildings.¹⁶

70. The Scottish Government has, and continues to, work closely with Homes for Scotland and developers. Several developers submitted Developer Commitment Letters to Scottish Ministers setting out their commitment in principle to identify, assess and remediate buildings over 11 metres in height that they have played a role in developing or refurbishing over the last 30 years. A copy of the Developer Commitment Letter is published on the Scottish Government website, together with a list of developers who have signed the Letter. [Scottish Safer Buildings Accord: developer commitment letter - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scottish-safer-buildings-accord/developer-commitment-letter-2022/pages/2022-05-12-developer-commitment-letter-2022-05-12.aspx)

71. The next step is to agree a Scottish Government Scottish Safer Buildings Developer Remediation Contract which will set out in detail the work that developers will undertake and fund to address the fire safety risks associated with external wall cladding systems.

72. While progress has been made in engaging with developers it is considered important to support this process by clearly setting out the consequences of a failure to engage with the Programme and agree to remediate, or fund the remediation of, their buildings within scope of the Programme.

73. It is recognised that a proportionate approach is required depending on the circumstances of the developer.

Position in England and Wales

74. The policy position that developers should contribute to the costs of remediating cladding on buildings that they developed is one which is also shared by the UK and Welsh Governments. The English and Welsh Governments have a similarly defined scope to the Scottish Government

¹⁶ [Cabinet Secretary for Social Justice Housing and Local Government \(parliament.scot\)](https://www.parliament.scot/Document/Statement/2022-05-12-developer-commitment-letter-2022-05-12.aspx)

in terms of the risk factors of buildings and the terms in which they were built. It is worth remembering that the largest developers in the UK operate across the four nations and significantly influence the way in which the construction market has operated. The UK Government has taken some steps in reserved areas, for example in respect of the regulation of personal indemnity insurance that have progressed the Scottish Ministers policy agenda.

75. There has of course been some divergence in building standards as recognised by Dame Judith Hackitt. There are also fewer residential buildings 11m or over in Scotland than in England and there is the obvious difference in tenure systems. Such factors amount to a practical differentiation in approach to remediation. The advantage of having a single building owner in England is that that party can address the cladding remediation challenge on behalf of all leaseholders while in Scotland this is a problem that this legislation is required to solve. However, in doing so Scottish Ministers are taking the opportunity to implement a robust assessment criteria that addresses whole buildings in a manner that has not routinely been assessed following completion of construction. This approach reconciles the original building standards with the need for appropriate building maintenance in the context of urgency on the cladding issue.

76. In England and in Wales the approach has been to offer grants. Whilst this was the initial approach in Scotland the Scottish Government has now moved away from this model towards direct commissioning.

77. In England, the Primary legislation providing for the Responsible Actors Scheme¹⁷ was introduced into Parliament in July 2021 and received Royal Assent in April 2022. That same month, April 2022 the UK Government announced that it had secured an agreement with developers to remediate their building through a pledge. Following that in-principle agreement the UK Government moved to start work on its Developer Remediation Contract. On 30 January 2023, the UK Government published its Developer Remediation Contract and asked invited developers to sign the contract by 13 March 2023. In total 49 developers signed the pledge, with all 49 developers signing the Developer Remediation Contract.

Responsible Developers Scheme

78. The Bill includes provisions that will allow Scottish Ministers to establish a scheme similar to the UK Government's Responsible Actors Scheme as set out in Regulations in April 2023 and enabled by the Building Safety Act 2022.

79. Developers who are eligible for the Scheme but do not elect to make the commitments as set out in the Scottish Safer Buildings Developer Remediation Contracts, or who fail to comply with its terms, should face consequences. In such circumstances, they may be prohibited from carrying out major development and gaining building control sign-off in Scotland, subject to any exceptions. This will ensure that Developers who commit to identifying, assessing, and remediating their buildings are not disadvantaged by the costs that they will face in meeting their obligations.

¹⁷ [The Building Safety \(Responsible Actors Scheme and Prohibitions\) Regulations 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

80. It is considered justifiable that developers who have profited from the construction of buildings with potentially unsafe cladding should contribute to the cost of its remediation. The aim of the Responsible Developers Scheme is to encourage developers to engage with the Programme constructively and to take the necessary steps to meet their obligations and remediate their buildings. The costs that they will be expected to meet will be agreed via the Scottish Safer Buildings Developer Remediation Contracts between Scottish Government and individual developers which will specify the costs that may be required to be met subject to individual Single Building Assessments.

81. The Bill provides regulation making powers which will allow the Scottish Ministers in summary:

- To identify property developers who have a prescribed connection to buildings with external cladding in order to require those developers to join a “Responsible Developers Scheme;
- To prescribe membership conditions for the Scheme;
- To prohibit identified developers who have not become members or whose membership has been terminated from carrying out development anywhere in Scotland and from obtaining building warrants or completion certificates (in effect preventing such developers from carrying on development activity).

ALTERNATIVE APPROACHES

82. The powers that are set out in the Bill fulfil its purpose and are required as necessary following direct experience of delivering the Cladding Remediation Programme. The provisions in the Bill have been judged as necessary either because there is evidence that without the proposed legislative changes there is a risk of significant delay and potentially an inability to safeguard residents in buildings where it is not possible to secure the necessary consents.

83. The Bill does not seek to address wider issues related to building safety. It is focused on measures which are considered necessary to support delivery of the Programme. As other issues are identified through the delivery of the Programme these will be considered as part of the wider Scottish tenure system or building safety.

84. Ministers have considered the provisions in the Building (Scotland) 2003 Act that refer to dangerous buildings and those in the Housing (Scotland) Act 2006 relating to Work notices. While these provisions provide local authorities with the authority to carry out similar tasks such as compulsory assessment, evacuation and remediation, these powers cannot be utilised by Ministers to enable delivery of the national, Scottish Government led Programme.

85. Ministers have committed to a Scottish Government funded Single Building Assessment in order to ensure consistent standards of remediation across the built environment. The Ministerial Working Group on Mortgage Lending and Cladding undertook detailed analysis to establish their preference for the Single Building assessment as the methodology for remediation of cladding.¹⁸

¹⁸ [Conclusions – recommendations for resolution - Ministerial Working Group on Mortgage Lending and Cladding: report - March 2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2021/03/Conclusions-recommendations-for-resolution-Ministerial-Working-Group-on-Mortgage-Lending-and-Cladding-report-March-2021-gov.scot)

Some developers have indicated a desire to undertake different assessments of their buildings within scope of the Programme.

86. Recognising this, Ministers have agreed that a Single Building Assessment need not be commissioned by the Scottish Government but would need to be undertaken in line with the standards set out by Ministers for a building to be included in the Cladding Assurance Register. It would only be possible to rely on the assessment and remediation provisions within the Bill to undertake work if those works had been identified through, or during, a Single Building Assessment process. Consistency in relation to the standard of assessment would provide the necessary level of assurance if Ministers were required to suppress consent to enable life critical work to be undertaken as well as providing confidence about the quality of information included in the Register.

87. The Cladding Assurance Register will gather data about assessments and work in a single place as well as providing assurance about the quality of such information. This will provide reassurance to those seeking to mortgage, remortgage, or secure insurance on properties within the scope of the Programme as well as to those providing any insurance or mortgage services. This was also based on the recommendations of the Working Group following their analysis.

88. Scottish Ministers are committed to working collaboratively with developers to secure their agreement to identify, assess and remediate buildings. Ministers recognise that as an alternative it would fall to individual owners to collectively organise to take litigation action against related developers at significant and prohibitive expense. The majority of concerned developers have been progressively forthcoming in addressing their responsibilities and there has been a healthy dialogue process to establish a pragmatic and efficient methodology to devote their resources to addressing the cladding crisis. However, there is currently no action which could be taken by Scottish Ministers in relation to developers who do not engage in the process and agree to remediate their buildings. This therefore creates an unfair advantage and potentially incentivises developers not to engage in the process and commit resources. Without legislation responsible developers who commit to remediating their buildings will potentially be disadvantaged.

89. Scottish Ministers have worked closely with developers and with Homes for Scotland over a period of almost a year to secure a voluntary commitment to remediate buildings. While those discussions on a Scottish Safer Buildings Developer Remediation Contract are continuing, it is clear that there is a need for further measures to supplement this process.

90. Consideration was given as to whether the commitment from developers to remediate their buildings could be delivered without legislation. The Scottish Government is committed to engaging with developers to agree a Scottish Safer Buildings Developer Remediation Contract. However, the legislation will add an additional layer of monitoring and enforcement. Experience in England and through discussions on the Scottish Safer Buildings Accord suggest that a legislative underpinning will be important in ensuring that all of the developers who should be stepping up to remediate their buildings do so. The legislation will help to create a level playing field for developers ensuring that those developers who step forward and do the right thing by voluntarily committing to remediate their buildings are not disadvantaged.

91. Significant public funding is being directed to remediating buildings in scope without a linked developer and it is right therefore that statutory obligations are put in place for developer remediation of buildings they developed. There is currently no requirement for a developer to engage with the Scottish Safer Buildings Developer Remediation Contract. If a developer refuses to engage then there is a risk that without legislation the cost of remediating those buildings falls to the taxpayer and those developers gain a competitive advantage over developers who are paying for the remediation of their buildings. Legislation will allow the Ministers to take action against developers who fail to safeguard residents and owners in buildings they developed. The Scottish Government's initial approach to assessing and remediating buildings with potentially unsafe cladding involved giving grants to owners typically through an intermediary such as a property factor. Owners, through their intermediary, would then commission a Single Building Assessment. However, this approach was complex and placed a significant demand on owners.

92. In May 2022, Shona Robinson, the then Cabinet Secretary for Social Justice, Housing and Local Government, therefore informed Parliament that the approach would change, and the Scottish Government would take on the role of procuring surveyors and fire engineers to carry out assessments on buildings. This change in approach would remove that burden from owners of the need for factors to move beyond their traditional role and responsibilities.

CONSULTATION

93. This Bill is being introduced at pace and without the full standard consultation process due to the need to ensure the continued momentum of progress in addressing critical life safety issues. The Programme has engaged in all of the areas that featured in the Working Group and its recommendations. Engagement with stakeholders from the Working Group has continued through the Cladding Remediation Stakeholder Group and there has been specific targeted engagement on the subjects that the Bill addresses. This engagement continues in order to guide the Programme in a manner best aligned to its strategic purpose.

The Ministerial Working Group on Mortgage Lending and Cladding

94. This brought together representatives from key organisations including:

- Association of British Insurers
- Homes for Scotland
- Law Society of Scotland
- Property Managers Association Scotland
- Royal Institution of Chartered Surveyors
- UK Finance
- Scottish Fire and Rescue Service
- Scottish Government

95. The recommendations of this Group affirmed Dame Judith Hackitt’s review outcomes in a manner relevant to Scotland. It published its final report on 19th March 2021.¹⁹ The group confirmed the suitability of the Scottish Advice Note on building assessment from which the Single Building Assessment approach has been drawn and their support for the Single Building Assessment programme. They also supported the creation of a database on buildings with cladding. The Group also recognised the importance of developers contributing to the remediation of buildings in Scotland.

96. The Cladding Remediation Stakeholder Group has been the principal stakeholder engagement forum for the Programme. Specific engagement sessions were held with members of the group, collectively and individually, while the policy for the Bill was developed to inform its contents. Its membership includes:

- Scottish Government
- Association of British Insurers
- Building Societies Association
- High Rise Scotland Action Group
- Homes for Scotland
- Institution of Fire Engineers
- Law Society of Scotland
- Local Authority Building Standards Scotland
- Property Managers Association
- Royal Institution of Chartered Surveyors
- Scottish Fire and Rescue Service
- Scottish Futures Trust
- UK Finance
- Scotland's Regeneration Forum
- Chartered Institute of Business

Specific Engagement with Partners on the Cladding Remediation Programme

97. There was engagement on the policy intent of the legislation with key partners such as the Scottish Fire and Rescue Service who have had operational involvement in the Programme. Heads of Planning Scotland and Local Authority Building Standards Scotland were also consulted in terms of the potential impacts of the Bill upon those areas. COSLA was engaged in the spirit of the Verity House Agreement and to inform policy that would underpin sections of the Bill affecting their resources.

¹⁹ <https://www.gov.scot/publications/ministerial-working-group-mortgage-lending-cladding-report-march-2021/>

Scottish Safer Building Accord Engagement Process

98. Scottish Ministers have publicly confirmed that the policy position is that developers should meet the cost of remediating buildings with unsafe cladding that they developed. This policy position has been publicly set out in Parliament.²⁰ Notably in her Parliamentary Statement on the Cladding Remediation Programme in May 2022 the then Cabinet Secretary for Social Justice, Housing and Local Government, Shona Robinson MSP, set out the policy position noting that *‘developers must play their part in making unsafe buildings safe wherever they are’*. The Cabinet Secretary further stated that *‘It is my clear expectation that developers linked to buildings with problematic cladding will fund remediation where this is identified. This will ensure that when public funds are needed to be spent, we can use them to focus on buildings and works where a developer cannot be identified, or no parent developer exists.’*

99. In her Parliamentary Statement in May 2022 the Cabinet Secretary also set out the Scottish Government’s intention to work collaboratively with developers, the wider sector, and Homes for Scotland to develop a Scottish Safer Buildings Accord. The Scottish Safer Buildings Accord was intended to set out the responsibilities of developers to identify, assess and remediate their buildings. In her statement the Cabinet Secretary made it clear that she saw no reason why a developer would not commit to doing in Scotland exactly as it had done in England as part of the UK Government’s pledge.

100. The Cabinet Secretary stated to Parliament in the May 2022 Statement that while the intention was to work collaboratively with the sector to seek to an agreement through the Accord, if necessary, the Government would make full use of their powers, including legislation. Scottish Government, developers and Homes for Scotland worked intensively over a period of several months to seek to agree a Scottish Safer Buildings Accord.

101. However, despite this intensive process of work, in March 2023 discussions had reached an impasse around the issue of the willingness of developers to remediate to updated Scottish building standards where standards had changed since buildings were constructed. The then Cabinet Secretary for Social Justice, Housing and Local Government wrote to the Convener of the Local Government, Housing and Planning Committee on 27 March providing an update on discussions and noting that, in line with her statement to Parliament in May 2022, she would seek to use the full powers of the Scottish Parliament including Primary legislation if it was not possible to secure an agreement on the Accord. The Cabinet Secretary noted that the Government was therefore exploring legislative options at pace. The inclusion of provisions on cladding in the forthcoming Housing Bill was considered, however this would have delayed the introduction of the provisions relating to cladding remediation which is not in line with the urgency required to mitigate life-critical safety risks.

102. Following an intensive period of further discussion nine developers subsequently signed and submitted Developer Commitment Letters to the Scottish Government. These letters and list of the signatories were published on the Scottish Government’s website.²¹

²⁰ [Update on cladding remediation programme: Cabinet Secretary's statement - gov.scot \(www.gov.scot\)](https://www.gov.scot/news/2022/05/2022-05-10-cladding-remediation-programme-cabinet-secretarys-statement/)

²¹ [List of developers - Scottish Safer Buildings Accord: developer commitment letter - gov.scot \(www.gov.scot\)](https://www.gov.scot/news/2023/03/2023-03-27-cladding-remediation-programme-developer-commitment-letters/)

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal Opportunities

103. An Equality Impact Assessment has been undertaken and will be published on the Scottish Government website. The policies are not intended to negatively impact, directly or indirectly, on any group of people with protected characteristics, or on the wider equality duties. Addressing fire safety risks provides a benefit to all residents but particularly those with a protected characteristic.

104. The Equality and Human Rights Commission made several submissions to the Grenfell inquiry²² including an indication of their view that the Public Sector Equality Duty had been breached by the Royal Borough of Kensington and Chelsea in decisions taken regarding the fire risk of the building.²³ The outcomes of the tragedy exemplify the discriminatory burden. Fire risk falls particularly on those with protected characteristics especially mobility issues. In relation to the Grenfell Tower fire tragedy 15 of the 37 disabled residents of the Tower died in the tragedy and 17 of the 67 children.

105. All Impact Assessments for the Bill will be published on the Scottish Government website, namely:

- Equality Impact Assessment
- Business Regulatory Impact Assessment
- Child Rights and Wellbeing Impact Assessment

106. The Scottish Government under Article 36(4) of the General Data Protection Regulation (EU) 2016/679 (as it forms part of retained EU law) wrote to the UK Information Commissioner's Office (ICO) on 21 July 2023 in relation to proposed data processing under the Bill. The ICO confirmed there was only a limited opportunity to engage on the proposal but they had no major concerns based on the information provided.

107. Impact assessments will be updated as further stakeholder engagement is carried out. These should be considered in conjunction with ongoing impact assessments for the Programme which are expected to be more detailed in considering the characteristics of residents of specific buildings.

108. We acknowledge that the impact of the provisions relating to owner consent in remediating buildings may raise issues for people with protected characteristics, especially mobility issues. This for example may be the case if changes must be made to car parking arrangements during the remediation process including for example closure of a car park. These risks will need to be identified and addressed at an individual building level as the risks, and any potential mitigation, will be specific to that building.

²² [Summary of submissions following Phase 1 of the Grenfell Tower inquiry | EHRC \(equalityhumanrights.com\)](https://www.equalityhumanrights.com/en/our-work/summary-of-submissions-following-phase-1-of-the-grenfell-tower-inquiry)

²³ [following-grenfell-letter-royal-borough-kensington-chelsea-27-february-2018.pdf \(equalityhumanrights.com\)](https://www.equalityhumanrights.com/en/our-work/following-grenfell-letter-royal-borough-kensington-chelsea-27-february-2018.pdf)

Human Rights

109. Section 29 of the Scotland Act 1998 sets out the limits on the legislative competence of the Scottish Parliament. One of those limits is the need not to contravene any of the rights under the European Convention on Human Rights (“ECHR”). The Scottish Government is of the view that none of the provisions in the Bill are incompatible with any of the Convention rights.

110. In terms of Part 2 of the Bill, the offences created in sections 2, 5, 9, 13, 14, 15, and 24 of the Bill, may engage Article 6 (right to a fair trial). Each of the offences created under the Bill and by subsequent Regulations are to be triable under the Scottish criminal justice system, and consequently will be subject to the various rules and safeguards which already provide for the fair administration of justice in Scotland.

111. The proposals in relation to Ministerial power to arrange for a Single Building Assessment to be carried out, remediation work and urgent remediation to be carried out, and the Ministerial power to evacuate buildings, in Parts 2 and 3 of the Bill engage Article 8 and Article 1 Protocol 1 (A1P1) of the convention. In terms of Article 8, the carrying out of work in an individual’s private property, a power of entry, and a power to evacuate buildings may interfere with the right to respect for an individual’s home and it is possible that they constitute a control of an owner’s use of their property for the purposes of A1P1. The Scottish Government considers that any interference is justifiable, and that the safeguards provided for in the Bill, including appeal rights where Ministerial powers to assess and remediate without the consent of owners are exercised, and the provision of notice (except in cases urgent remediation is required), strike an appropriate balance between owner’s A1P1 property rights and the interference in terms of the broader aim of public safety.

112. Part 4 of the Bill may engage A1P1, albeit that the engagement of A1P1 primarily arises in relation to Regulations made under the regulation making power, in that a developer may be required to pay the costs of remediation of unsafe buildings that that developer built or refurbished once Regulations are made. It is the view of the Scottish Government that any interference is justifiable. The policy aim is to ensure that unsafe buildings with external cladding systems are remediated by property developers who profited from the sale of such buildings, and to ensure that the cost of remediation does not fall on the public purse or on individual residential property owners. A particular developer will only be required to remediate or pay for remediation of buildings that they have a connection to, such as buildings that they built or refurbished over a defined period.

Island Communities

113. There are 6 local authorities in Scotland that have islands within their area. Enquiries as part of the preparation of this Bill have established that to date there are no buildings within scope of the Programme in any Island community. Therefore, at this time, the Scottish Government does not anticipate that the Bill provisions will differentially affect those who live on the islands compared to those who live on the mainland.

Local Government

114. Local government are important partners in delivery of the Programme. Scottish Ministers have worked collaboratively with local government in supporting residents and owners.

115. Individual local authorities are the responsible bodies for granting permission for work to be done (building warrants) and for a completed building to be occupied. The Responsible Developers Scheme is likely to engage with local authorities' responsibilities if a developer is identified as being eligible for the Scheme but who does not comply with the conditions and is therefore prohibited from development. The exact provisions of the Scheme will be set out in Regulations, and we are committed to engaging with local government in drafting those Regulations to minimise any burden. Specific direct engagement with Heads of Planning Scotland and Local Authority Building Standards Scotland indicates a common understanding of the issues involved and a common desire to ensure an effective scheme to remedy them.

Sustainable Development

116. A pre-screening report was undertaken and submitted to the Strategic Environmental Assessment Gateway in July 2023, seeking views on whether the duties in the Bill would have a significant environmental effect and whether a Strategic Environmental Assessment is required. It was determined that a Strategic Environmental Assessment was not necessary and that the provisions are therefore deemed to be exempt from the strategic environmental assessment under section 7(1) of the Environmental Assessment (Scotland) Act 2005

117. The Cladding Remediation Programme is contributing to sustainable development by repairing fundamental flaws in the built environment. Dangerous cladding is a threat to the structure of the environment and human life and therefore fundamentally unsustainable. The Bill intends to address this by increasing the pace of remediation, raising the standard of buildings and requiring a contribution to the cost of remediation from those responsible. The Cladding Assurance Register will form part of an ongoing set of tools to regulate the built environment by providing high quality information to assist in the maintenance and repair of buildings.

118. Ministers have identified concerns amongst stakeholders as to the impact that these provisions will have on the operations of property developers and their ability to maintain their operational investments in the construction sector in Scotland, particularly in the construction of affordable housing as growth of these sectors is an important element in the provision of housing and local regeneration.

119. The policy objectives of the Bill align with UN Sustainable Development Goal (SDG) 9. Goal 9 which seeks to build resilient infrastructure, promote sustainable industrialisation, and foster innovation. In addition, it aligns with SDG 11 which is about making cities and human settlements inclusive, safe, resilient, and sustainable.

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

POLICY MEMORANDUM

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