



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government, Housing and Planning Committee

Tuesday 6 February 2024

Session 6



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LOCAL GOVERNMENT, HOUSING AND PLANNING COMMITTEE
5th Meeting 2024, Session 6

CONVENER

*Ariane Burgess (Highlands and Islands) (Green)

DEPUTY CONVENER

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

COMMITTEE MEMBERS

*Miles Briggs (Lothian) (Con)
*Stephanie Callaghan (Uddingston and Bellshill) (SNP)
*Pam Gosal (West Scotland) (Con)
*Mark Griffin (Central Scotland) (Lab)
*Marie McNair (Clydebank and Milngavie) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Kate Hall (Scottish Government)
Paul McLennan (Minister for Housing)
Rachel Sunderland (Scottish Government)
Micheila West (Scottish Government)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Local Government, Housing and Planning Committee

Tuesday 6 February 2024

[The Convener opened the meeting at 09:32]

Decision on Taking Business in Private

The Convener (Ariane Burgess): Good morning, and welcome to the fifth meeting in 2024 of the Local Government, Housing and Planning Committee. I remind all members and witnesses to ensure that their devices are on silent. I should also say that Marie McNair will be joining us online.

Agenda item 1 is a decision on taking business in private. Do members agree to take items 4 and 5 in private?

Members indicated agreement.

Housing (Cladding Remediation) (Scotland) Bill: Stage 1

09:32

The Convener: Under agenda item 2, we will take evidence on the Housing (Cladding Remediation) (Scotland) Bill from the Minister for Housing, Paul McLennan, who is joined in the room by Scottish Government officials Kate Hall, director, and Rachel Sunderland, deputy director, from the cladding remediation directorate; and Micheila West, from the legal directorate.

I welcome our witnesses to the meeting and invite the minister to make a short opening statement, after which I will turn to questions from members.

The Minister for Housing (Paul McLennan): Good morning to the committee. Thank you for the opportunity to speak to you today on the important topic of the Housing (Cladding Remediation) (Scotland) Bill.

The safety of home owners and residents continues to be this Government's absolute priority, and the cladding remediation programme is a core element of our comprehensive response to the tragic fire at Grenfell tower. The committee will be aware that, following that tragedy, we established ministerial working groups on mortgage lending and cladding and on building and fire safety, both of which included a wide range of stakeholders. Sustainable progress has been made on key issues, including changes to fire safety standards and guidance, as well as legislation on smoke alarms.

When I gave evidence to the committee back in May on our cladding programme, I noted that we were looking urgently at legislative options to address barriers to the delivery of the programme to keep residents safe and hold developers to account, and I am pleased to be back in front of the committee today, giving evidence on the Housing (Cladding Remediation) (Scotland) Bill.

The bill builds on the work of the ministerial working groups on building and fire safety and on mortgage lending and cladding that I have mentioned. As a result of the direct experience of delivering the cladding remediation programme, the feedback from partners and stakeholders, including residents, and our learning from cladding programmes in England and Wales, I have given priority to engaging with developers and residents, both individually and collectively. I record my thanks to colleagues across the chamber for engaging with me and my officials on behalf of their constituents.

In furtherance of the bill, we are committed to further engagement on regulations, guidance and implementation, and we will continue to listen and engage. I recognise that there is a desire to increase the pace of delivery. That is why we have moved from a grant approach to a direct delivery model. I welcome the fact that nine developers have signed developer commitment letters and have agreed to identify and remediate their buildings. We are now working at pace to agree a developer remediation contract. The need to address barriers to delivery and increase the pace underpins the legislation and, specifically, the proposed powers to assess and remediate buildings where the consent of home owners cannot be obtained.

The committee has heard from witnesses who agreed that it would not be fair for willing home owners to be obstructed from remediation by others who are unwilling or absent. The particular danger posed by cladding has necessitated bespoke powers relating to that issue, balanced by strong procedural safeguards to protect the interests of owners and residents.

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

Clearly, responsibility is at the forefront of our minds. We have included provisions in the bill to support developers who want to participate in the remediation of buildings for which they are responsible. The proposed framework of the responsible developer scheme preserves the position of those who accept responsibility and ensures that they will not be at a commercial disadvantage because of their participation. Similarly, eligible developers who decide not to participate should be appropriately sanctioned.

Many developers in Scotland have already signalled their intention to remediate the buildings that they constructed or refurbished through the Scottish safer buildings accord. It is only right that we prepare a level and consistent operational landscape for them. Accordingly, we are treating the public finances respectfully by spreading the financial burden of remediation to those who are most directly responsible. Our focus as a Government on the communities that we all serve means that that will be done in a fair and proportionate way without endangering the viability of participants in a sector that is valuable to the economy of Scotland.

In summary, the bill is designed to facilitate the progress of the cladding remediation programme. It will allow for the creation of a cladding remediation register, which will provide information on buildings that have undergone a single building assessment and remediation. It will allow for the assessment of buildings through a single building assessment, even in cases in which it is not possible to secure the consent of home owners. It will allow ministers to specify the standard for a single building assessment, and it will provide ministers with the power to arrange remediation work where that work has already been identified in a single building assessment report and is needed to eliminate or mitigate risks to human life that are directly or indirectly created or exacerbated by the building's external cladding system, even in cases in which it is not possible to secure consent. The bill also includes provisions to establish a responsible developer scheme.

I look forward to answering any questions that members may have. As the convener said, I am accompanied by my officials Kate Hall, Rachel Sunderland and Micheila West.

The Convener: Thank you very much for that opening statement, minister.

As you will be aware, we have had some very useful and constructive round-table sessions on the bill, as a result of which we have questions for you.

My first question is on the scope of the bill. Owners of, and residents who live in, buildings with potentially flammable cladding have said that the bill does not address the key issue that they face, which is the lack of action to remediate fire risk in a timely manner. What reassurance can you offer that the bill will deliver speedy cladding remediation?

Paul McLennan: As I mentioned in my opening statement, I have regularly met developers and groups of residents, and that has come through as part of their concerns. With regard to the scope of the bill, the main focus was on external cladding. One of the key issues in discussions that we have had with developers and residents has been overall fire safety. Obviously, there are on-going discussions about that in relation to every building that we are involved in.

There is a difference between fire safety and remediation if, for example, fire doors have been taken off. We have picked that up from residents. There is the issue of fire safety, but there are also issues around the maintenance of fire programmes. We have tried to pick that up in individual discussions.

The scope of the bill focuses on the cladding, but there are on-going discussions with developers and residents about overall fire safety.

The ministerial group on fire safety gets included in relation to the cladding element of the buildings that we are looking at, as well as more extensively in relation to the building network across Scotland.

The Convener: We know from what we have heard from owners and residents that one of the key challenges for them is the difficulty that they face in obtaining insurance and in selling or remortgaging their property. It is not clear from the evidence that we have heard that an approach that involves responding to the challenges of cladding alone, and not responding to the wider fire safety issues, will precipitate a change in the situation. What are your thoughts on that?

Paul McLennan: That has been a frustration of the process. In November or December, I chaired an interministerial group meeting. It is a reserved matter, so we discussed it with UK Finance. The Welsh Government, which I had previously met, had the same concerns at that time. Officials have raised the issue on a number of occasions, and I have raised it on a number of occasions with my opposite number, including in the ministerial group.

One of the key things that we asked for, which is in the process of being arranged, is a working group with officials to progress matters. In the discussions that we had, the United Kingdom Government said that, with regard to regulations, it was focusing its approach first on England, and that it hoped to roll that out to the devolved Administrations. We needed to see a quickening of the pace. We got an undertaking that that would happen, but, as I said, that is not within our control because we are talking about a reserved matter.

We are aware of the issue, which has been raised by residents on a number of occasions. Discussions are on-going with officials in an effort to get to a solution, not only for the UK Government but for us, the Welsh Government and—now that it has been reformed—the Northern Ireland Executive, although it is just starting the process.

The pace at the moment is frustrating. It is outwith our control, but we continue to push the matter whenever we meet ministers or officials. Rachel Sunderland or Kate Hall might want to mention some of the discussions that they have had in the past few weeks.

Rachel Sunderland (Scottish Government): I add that the Association of British Insurers is part of our cladding stakeholder group. It has been closely involved all the way through the process. The register is something that we are talking to it very closely about, because it is a mechanism to give the ABI the information that it needs on buildings that have been assessed and

remediated, which should help the residents to access financial products, including insurance.

We will continue to work with the ABI as the bill goes through its process and, if it is passed, we will work with the ABI on how we operationalise the bill in a way that works and addresses those concerns that are within our gift to address.

Paul McLennan: I am happy to write to the committee if there is any progress on that, but we continue to push the issue on a regular basis.

The Convener: Thank you; that would be very welcome.

My final question is also on the views of owners and residents. They have raised concerns about poor communication from the Scottish Government regarding cladding remediation, especially about the single building assessment pilot project. I would be interested to hear your thoughts on that and what you will put in place to improve communication.

Paul McLennan: In speaking to residents, that issue has come up quite a bit. It was raised at a meeting that I had just last week with residents of a number of developments. A key point is that there has been a large increase in the number of people in the directorate who are working in the cladding area. I know that we need to do a bit more work in that area, and we are looking at communication protocols.

Communication is slightly different for each building, each developer and each factor. There has to be a personalised approach, but communication needs to get better. As I said, the directorate has grown over the past number of months as the bill has developed and as we have done more work in this area. I acknowledge that we need to do more on communication, but it needs to be personalised to each building.

Even if there is nothing in particular to say, we should tell residents that there is nothing to say but that work is being carried out. The fact that there has been a vacuum is what people are concerned about. We have picked up on that in the pilot project. The issue has been raised by residents. I acknowledge that more could have been done, but we are working on that just now.

09:45

The Convener: So, more resource will be directed towards the initiative, and there will be more regular communication, even if there is nothing to be said.

Paul McLennan: Yes. In the chats that I have had with residents, they have said that about communication. Even if there is nothing to say in the next six months, they should at least get an

update after three months that says, “We’re working on this, and we expect to get back to you in three months.” They simply want some regular communication. There is also a role for factors and developers to play as part of that process.

Developing a communication protocol is really important. When the directorate was set up, the focus was on looking at the technical issues and working with developers and so on. There are now more staff in the directorate, and communication will be incredibly important as we step up the pace.

The Convener: It is great that you are aware that that needs to happen. I now bring in Mark Griffin.

Mark Griffin (Central Scotland) (Lab): Why was there no public consultation when it came to developing the proposals in the bill?

Paul McLennan: One of the key things in that respect was the bill’s immediacy. When I came back to the committee—I think that it was in May—I said that we were considering that at that particular time. A consultation process normally takes three months, which would have taken us towards the end of the year—or, at least, after the summer recess. There was an immediacy about moving the bill forwards.

Ministerial working groups had also spoken to stakeholders over that time, and one of the key things for me was that on-going consultation. I have also had numerous meetings with Homes for Scotland, where individual developers have been present, and I have had probably two or three meetings with individual developers to pick up on their concerns.

The important thing is not only liaising and working with the committee, but working with and speaking to residents. I have tried to meet residents groups on a number of occasions. Sometimes, we have had two or three meetings.

As I have said, the immediacy of the bill and getting it through have been the main things. If we had not gone with our timetable, the process would probably have been taken us to the end of the year. However, for the reasons that we have outlined, the bill gives us the power to move and quicken the pace of the programme. Again, I have tried to be as open and transparent as I can with all the stakeholders on a number of occasions, and we will continue to do so until the bill is passed and, indeed, afterwards.

Mark Griffin: I appreciate the need for urgency. Was anything picked up in the committee’s evidence sessions after the bill was introduced that might have been gathered through the public consultation that you are now reflecting on?

Paul McLennan: I talked about communication, and that was important. Obviously, the bill has its technical aspects. I will bring in Kate Hall and Rachel Sunderland to talk about some of the discussions that they have had, but one of the key things for me was to talk about the technical specifications as we move forward as well as the SBA process. That is where the individual discussions with the developers have been really important.

Although the approach that we have taken is similar to that in England and Wales, the fact is that the tenure system in Scotland is slightly different. As a result, we needed to take a nuanced approach, and that might have picked up some of these issues, too. Again, things might have been picked up in our individual discussions with stakeholders on the technical issues, but we have certainly listened to what the stakeholders were telling us, and I am sure that there will be further questions about that.

The key thing was to listen to stakeholders. Because I was going into the process without having had a consultation, I was keen to make sure that I consulted the stakeholders as much as possible. I know that colleagues and officials have been doing that on a regular basis, and I will continue to do it, too, as the bill progresses. I have always said that it is an open-door process, so if a developer needs to come and speak to me or our residents, I am more than happy to pick that up. However, it all comes back to the immediacy issue and the need to get the legislation through to quicken the pace of what we are trying to do.

Mark Griffin: As you will know, we have heard a range of views in our evidence sessions. Some witnesses have raised concerns about the bill’s broad scope and how it could impact the speed and cost of assessment and remediation, while other witnesses have said that the bill does not go far enough and that they want the bill to cover all fire safety aspects of buildings, rather than just cladding. What is the minister’s—and the Government’s—thinking with regard to the balance of those arguments? Is there any potential for prioritisation based on the risk of multiple fire safety issues?

Paul McLennan: One of the key things that was established in the scope of the programme after Grenfell was the cladding issue; indeed, there were discussions about that before I came into post and the scheme started to develop. However, developers have also raised the broader issue of fire safety overall, and I will bring in colleagues to talk about some of the discussions we have had on that.

I know that Mr Briggs and others on the committee have mentioned the programme’s scope and how far it goes. I suppose that this is all

about striking a balance between how quickly the legislation needs to go through and where the biggest risk lies.

Having read the evidence from the committee's previous sessions, I know that there is, as you have said, a mix of views on the issue. Indeed, individual discussions with developers and residents have raised the issue not just of cladding but of overall fire safety; those discussions are on-going, but I am confident that the scope that we have now is sufficient for us to move on.

Rachel Sunderland or Kate Hall might want to come in on the discussions that we have had on fire safety.

Rachel Sunderland: With regard to scope, it might be helpful to know that there are cladding remediation programmes in Scotland, in England and in Wales, and they are all similar and aligned in terms of their scope, the size of the buildings that they address—that is, 11m and above—and the time period that they cover.

We know that there are other building safety issues such as reinforced autoclaved aerated concrete, or RAAC, but this particular programme is quite tightly focused on cladding remediation, and we have sought to have its scope reflect that. I think that we will always have to balance how broad and how narrow that scope is. We have tried to align our programme with the programmes in England and Wales so that we link up with them and ensure a certain similarity in what we are all trying to do.

Paul McLennan: As I have said, discussions are on-going. There is existing legislation on fire safety, but the question is how that fits with the cladding issue. There are always discussions to be had, and when we speak to residents and developers, this is an issue that comes up.

As I mentioned to the convener, there is also an issue around fire safety maintenance in buildings; there is a difference between that and fire safety in buildings. After all, the question whether things are being maintained is slightly different from issues of fire safety, which have been picked up by existing legislation.

As Rachel Sunderland has said, we are just following the outlook of the Governments in England and Wales. The Northern Irish Government is just starting its process, and it has already been in touch with us to discuss where ours fits in. We are very much following the scope that was chosen by the UK and Welsh Governments.

The Convener: I want to go back to Mark Griffin's question on the public consultation. You said that you have had extensive meetings with various stakeholders, but I did not hear you

mention fire safety experts, surveyors or the people who will need to deliver the work on the ground. Have you had meetings with them?

Paul McLennan: I have not done so myself, but colleagues have. There is obviously an element of technical knowledge required, of which I have a little, but discussions involving actual technical fire safety knowledge have been held and fed back to me. Kate Hall or Rachel Sunderland might want to come in on this, but I can say that there have been extensive discussions with that sector.

Rachel Sunderland: I will add only that the bill's proposals come out of quite a long history of engagement. Indeed, we have had the ministerial working group on building and fire safety, the ministerial working group on mortgage lending and cladding, and the stakeholder groups, which have included the Association of British Insurers and the Institution of Fire Engineers. The proposals have also come out of our learning from the programme itself. Through that, we have had quite extensive engagement with fire engineers and experts, as well as feedback from developers.

Although there has been no formal consultation, there has been quite a lot of engagement. I should also say that, on certain elements, such as the previous Scottish advice note, a consultation was carried out. There has been quite a lot of engagement around different elements, and the bill is a reflection of all those different bits of engagement, including engagement with experts.

Kate Hall (Scottish Government): I will just add that, as part of the work that we are doing on the SBA specification, we have technical experts who are contracted with us to support that, and we also have technical expertise within the directorate as part of our wider skills mix. We are actively engaging all the time to ensure that we have covered all the technical bases fully and completely.

Paul McLennan: Homes for Scotland has arranged round-table discussions and we have also met individual developers. We tend to meet a mix of managing directors, finance directors and the technical people who need to be in the room. We also have technical people in the room when policy is discussed at round tables and at the individual discussions, so things are quite well covered.

The Convener: That certainly is reassuring. I call Pam Gosal.

Pam Gosal (West Scotland) (Con): The concept of the single building assessment is central to the bill, but witnesses have told us each week that there is a lack of specification and guidance about those SBAs and that we do not know what they will look like, what the specifications will be or what standards buildings

will be assessed to. Indeed, Phil Diamond from Diamond and Company (Scotland) Ltd told the committee:

“chartered professionals ... desperately need something to benchmark that, so that everybody is working to the same standard and singing from the same hymn sheet.”—*[Official Report, Local Government, Housing and Planning Committee, 30 January 2024; c 19.]*

Does the Scottish Government intend to clearly define the scope of the single building assessment and the standards that the SBA will assess, and, if so, when?

Paul McLennan: That has been the main issue in the discussions with Homes for Scotland and with individual developers. I will bring in officials to talk about the technical discussions that they have had.

When I came into this role, I had a number of key objectives, one of which was to get a developer commitment letter to ensure that they signed up to what we were trying to do. The issue was raised when I spoke to individual developers at that stage, and we got the letter signed; the next stage was to move towards the long-form contract, which was when the SBA issue came up.

When the SBA process was raised, I asked officials to set up a task and finish group, which has been running for a number of months now, to work on the exact specifications. We did that, and Homes for Scotland was present at that meeting; we then had individual and round-table discussions. In fact, there have been a number of round tables as we have worked on that.

As the tenure system is slightly different in Scotland, there was a Scottish advice note, and we talked about moving towards a publicly available specification and the technical specifications to go along with that. We also had individual discussions with developers.

The SBA will pick up different things in different buildings, depending on where the developers are. We have tried to work very closely with developers, but we need to have technical specifications, both for the safety of residents and so that we are satisfied. That is incredibly important.

The key thing for me was to have individual discussions and to listen. I visited a number of buildings, so that I was not just hearing from developers but going out and telling people what we were looking at, what we were doing and what clarity we needed. That has been the priority all the way through and we are not far away from getting agreement with all the developers. It has probably slowed down progress, but it is important that we, and the developers, are happy with the specifications. Most important, even though they might not know the technical specifications,

residents must believe in us and in the developers. That has been a focus for me all the way through, and it will continue to be a focus in our discussions with individual developers.

I will bring in Rachel Sunderland or Kate Hall to talk about where we are now. I know that really good progress has been made on that and that we will soon have that agreement and be able to move forward. It is important to have that in place. Rachel might want to say a little more about that.

Rachel Sunderland: The bill provides for the Scottish Government to produce guidance on what a single building assessment is, and it would also allow ministers to put the level of detail that people are asking for into guidance.

Kate Hall: We have a contractor working on a technical specification for the SBA and, as the minister has said, we have been listening to developers and our own technical experts as that has been developed. That work is on-going and we hope to have a final draft by the spring, which will provide certainty for developers and others. Obviously, we cannot have an SBA until the bill has completed its passage, but we hope that the technical specification that we are working on now will provide the basis for that to continue in future.

Paul McLennan: The key thing for me, from the start, was to have open and transparent discussions with developers. I have said all along that there is an open door and that we want them to come back to us. Even though we could go out and set the specification on our own, it is important to get agreement.

Cladding is one issue, but I meet developers on a regular basis, and issues other than cladding are raised, too. For me, the process has very much been inclusive, and we have tried to listen to developers as much as we possibly can. That is why we set up the task and finish group, which was really important. That work will continue, but I do not think that we are far away from getting that specification, which I think will quicken our progress.

10:00

Pam Gosal: Obviously it is encouraging to hear that you have a task and finish group and that you are having good consultation, but industry would probably like to hear when the work will be completed. A lot of questions have arisen; indeed, I have already raised the point about professionals singing from the same hymn sheet. Kate Hall has mentioned spring, but what timescale are you looking at here? There have already been lots of delays with the cladding situation. What can the industry take from the committee today by way of surety that you will be bringing out the specification in, say, the next four or five months?

Paul McLennan: I will let Kate Hall respond first and then come back on that myself.

Kate Hall: As the developers are actively involved in the process, they will have transparency about where we are with developing the technical specification. I hope that we will have a final draft of it by Easter. Obviously it cannot relate to the SBA under the bill until the bill itself is passed, but we would hope that the technical specification that we have by that point will be the one that we can move forward with under the terms of the bill once it has completed its passage through Parliament.

Pam Gosal: Would you be looking at using secondary legislation for that, or will there be guidance?

Kate Hall: Because the bill is designed to provide guidance on setting out the SBA in the future, secondary legislation is not required to set it out as part of the subsequent arrangements in relation to the eventual act.

Paul McLennan: It comes back to how involved developers are in discussions. The technical people from each of the companies involved have been incredibly helpful throughout the process. We leave the technicalities to the people who have the expertise, but updates on progress are fed back to me on a regular basis. We are pretty confident that we will have the specification agreed by springtime, as Kate Hall has said.

We listened to what developers said regarding the PAS standards. That said, the situation is slightly different here. It is not just a case of picking something up from the UK Government and moving it here, given the slight differences in the tenure systems and so on; however, we have tried to work as closely as we possibly can with developers, and they are still part of the task and finish group. This is all fed back to Homes for Scotland, although discussions about some buildings are sometimes conducted on a more individual basis, as they concern slightly different types of building. We are trying to listen.

I agree that it is incredibly important to have an overall process and agreement in place. Once we have that, the pace will be a lot quicker, and it is a key priority for me and officials to move on in that regard.

Pam Gosal: The committee has heard calls for the Scottish Government to adopt PAS 9980 as the basis for the single building assessment process. It is popular among professionals, offers more flexibility for professional judgment and is widely used by professionals across the United Kingdom. For example, Phil Diamond believes that

“With a bit of modification”
to fit in legal aspects and such,

“the PAS could be the way to go”.

while Gary Strong from the Royal Institution of Chartered Surveyors pointed out that

“a fire is a fire and a building is a building, wherever it is, geographically.”—[*Official Report, Local Government, Housing and Planning Committee*, 30 January 2024; c 20.]

Broadly, witnesses seem to agree that there is merit in harmonising standards where possible. How do you respond to the calls to adopt PAS 9980 and harmonise the different standards?

Paul McLennan: PAS was raised in a number of the discussions that we had with developers. I know that the two people who gave evidence to you last week have not been involved in discussions as such. We consult with the sector more broadly, but the focus with developers has been on the task and finish group. I will bring in Rachel Sunderland on the discussions that have been held on the technical issues, but we listened to what the sector was telling us at the developer round table and in individual discussions.

As I have said, the system is not just some pick-up-and-shift thing coming from the UK Government, because the tenure systems are different, and there are slightly different building regulations. We have been taking on some of the feedback that we have received, and we have gone into the technical specifics of the specification itself. As Kate Hall has said, we are not too far away from getting agreement and moving on.

I do not know whether Rachel Sunderland or Kate Hall wish to add anything.

Kate Hall: How PAS 9980 could apply in Scotland is the focus of a lot of our discussions at the moment, taking into account the tenure system and the different arrangements in relation to the wider fire safety regime.

We have been listening to that call; indeed, it was part of the discussions in the task and finish group last November and December. We have been hearing from developers about the benefits of a degree of harmonisation, where possible, throughout the UK. For a start, it would support the wider supply chain and those carrying out SBAs.

There is still further work to do, but PAS 9980 is certainly the current focus of our discussions in relation to the technical specification.

Paul McLennan: Again, convener, I am happy to write back to the committee when we reach agreement, to keep you up to date on that.

The Convener: Thanks very much for that. I call Stephanie Callaghan, who will continue the single building assessment theme.

Stephanie Callaghan (Uddingston and Bellshill) (SNP): I thank you for coming along this

morning, minister. I thank our other witnesses, too, of course.

There have been some issues with the single building assessment giving only a pass or fail, and lessons have been learned relating to PAS 9980 and intermediate risk. We have heard particular concerns from across all sectors that pass or fail scoring could lead to buildings that are not dangerous to life failing the assessment. What is your response to the calls for the single building assessment to recognise tolerable or medium risk?

Paul McLennan: I will bring in officials in a wee second. Generally speaking, the cladding safety issue is the most important thing. When it comes to individual buildings, I know from the first week in the job that there were specific concerns about one building—I will not name it—on which tough decisions had to be made. Within a day or two, there were issues that were causing us real concern. There were a couple of buildings like that, for which decisions had to be made in order to negate risks quickly.

On the binary—pass or fail—scoring, our getting down to the level of detail that we are talking about and having agreement in place on the specification are really important. In relation to some of the evidence, some people might not be aware of our discussions with developers about what that looks like. That is the level of detail that we are down to, because this is not just about the specifications going forward, but about where we are just now.

Discussions are always taking place with developers about individual buildings that are going through the system, so that aspect is always looked at.

Kate Hall or Rachel Sunderland might want to talk about some of the technical discussions that have been had. The questions that are always at the forefront of our minds are these: as work is carried out or as we move towards work being carried out, is the building safe and what is the standard?

If there are specific risks, as there have been in some buildings, we have taken action to negate those risks. In my statement, I mentioned giving us the powers to do that: at the moment, we must negotiate with developers and local authorities to allow us to take that action. When the bill is passed, we will be able to carry out immediate work, if that is required.

We have had issues in relation to negotiating with other stakeholders about negating some of the immediate risk. As I said, I have seen a couple of examples of that.

I will bring in Kate Hall to comment on the tolerable standard and what has been fed back. As I said, the issue is at the forefront of our minds, always.

Kate Hall: As I said, the technical discussions are on-going. We have been listening very carefully to our technical experts and to the evidence that has been presented to the committee. I will be very happy to provide a further update once that work has been progressed a little more. We have not finalised the arrangements for the specification: that work continues. However, I am noting considerations that we need to take into account as we move through the process.

Stephanie Callaghan: When do you expect to have a firmer idea about tolerable risk?

Kate Hall: We have not yet taken a decision on the final risk levels. We will finalise that during the process. The work is on-going, so we will, obviously, come back to the committee as soon as that is ready.

Paul McLennan: I have had discussions with individual developers: the key thing is to work with developers. It is not in their interests to have tolerable risk in any of their buildings. If we have seen what we think is risk that carries immediate or high danger, we have moved on that very quickly. As part of the wider discussions, which are still going on, we are talking about the specifications in the SBA.

Kate talked about getting agreement on the SBA around April. Easter is at the end of March, I think, so we are talking about getting agreement around that time. The discussions have been part of discussions in the round. Having the SBA process agreed would allow us to move on and set the tolerable standard. Those discussions are on-going on a daily basis and, obviously, risk is assessed on a daily basis.

We have dealt with issues very quickly when we have needed to, in conjunction with developers. Other stakeholders that we need to negotiate with can sometimes be an issue. The legislation that will come into force will give us the powers to deal with such issues without having to negotiate, and powers to negate risk as quickly as possible. However, buildings with that risk are being assessed every day.

The Convener: I want to respond to that a little bit. We have heard about tolerable risk, and we have heard that, at the moment, there is a pass or fail approach, but experts and others are calling for a more nuanced approach. At the moment, a building could end up being in a high-risk category, but the situation could be more nuanced. What is needed is something that has an amber category—that is how people have been referring to it. Can you talk to that a little?

Paul McLennan: I will bring Kate Hall in on that. As I said, discussions about building safety are ongoing every day. There is obviously an element between the SBA process and moving towards remediation, in which there is assessment of whether there are immediate risks and where those sit. Again, that is different for every developer and every building. Kate Hall or Rachel Sunderland might want to come in on your specific point. Developers have raised that with us, as well.

Kate Hall: Yes, absolutely. That is part of our consideration at the moment. We have heard the discussions about how nuancing could assist in terms of the overall process. However, we need to balance that against ensuring that we meet the objective of the programme, which is to ensure that, where there are direct or indirect risks to life that are exacerbated by cladding, we are able to resolve matters and to make buildings safer.

The question of also having tolerable risk rather than just yes or no categories is something that we are looking at and are very much alive to in our discussions with our technical experts and with developers. Clearly, consideration of the safety and protection of homeowners is part of that.

The Convener: Thanks for covering that in a bit more detail.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, minister and colleagues. I have a couple of questions on the cladding assurance register, and one on issues that have been raised by the Law Society of Scotland.

Is it the Government's intention that the cladding assurance register will be a one-off snapshot register and that it will not change, or do you plan to regularly update it when changes are made to buildings? If it is the latter, do we need a statutory process to make sure that only responsible persons can update the register? Could you describe the Government's thinking on that?

Paul McLennan: I will bring in Micheila West on the legal aspect.

There are a number of reasons why we are talking about a cladding assurance register, and a key one is the residents. The most important point is that their knowing that their building is on the cladding assurance register gives them a bit of comfort. It is also important for developers to know that their building is on the register, and the Government has recognised that.

As part of the pilot project, we have discussions with developers about how to move forward. There is an iterative process. We need to make sure that buildings go on the register. We have talked a bit about the discussions that we have had about insurance and mortgages; that, in itself, is a step forward. It is a technical process. It is almost

saying to lenders and insurers that a building is on the cladding assurance register. That is an incredibly important part of the legislation that we are working on. For me, it is very much an iterative process.

I will bring in Micheila West, who might want to add something about the legal basis.

10:15

Micheila West (Scottish Government): Section 1 of the bill lays out that the information in the cladding assurance register includes when a single building assessment was carried out, the works that the single building assessment report identified as being needed to eliminate risks to human life, and the date on which the Scottish ministers were satisfied that that work had been completed. The Scottish ministers have overall responsibility for identifying whether works are completed to a standard with which they are satisfied.

Rachel Sunderland or Kate Hall might add to that.

Rachel Sunderland: It is fair to say that the cladding assurance register becomes the exit point for buildings that are in the programme. If the single building assessment is the start of the process, the cladding assurance register is the exit point, because it says that a building has been through a single building assessment and the issues that have been identified that relate to risk to life have been addressed and remediated.

I do not think that we would expect a building to come back through the process again; we would expect it to have been identified, assessed then remediated. If an issue is raised by a mortgage provider or an insurance provider and the building looks like it has cladding, they might ask, "How confident are we about that cladding?" They would be able to look at the register and have confidence that the building had been assessed and that issues had been remediated. That is the purpose of the cladding assurance register. I hope that that is helpful.

Willie Coffey: What will happen if a building whose registration took place years earlier is subsequently modified or otherwise changed?

Rachel Sunderland: If further cladding is to be put on a building, it will fall under the new legislation, in respect of types of cladding that could be put on it. That cladding should not represent a fire safety risk in the way that historical cladding could represent a fire safety risk, because the legislation has changed and is very prescriptive about the types of cladding that developers can put on a building.

Paul McLennan: On that point, Mr Coffey, it is important that developers engage on future standards. Are they reviewing their own processes? I would not say as much as that, but in relation to other buildings that come forward, more care is probably taken. We know that they are aware of the on-going maintenance of the buildings; it is not just a case of coming in and replacing cladding. Developers are aware of that issue, going forward.

Willie Coffey: My next question is on the cladding assurance register and the timing of entries being made. You are probably aware that colleagues have asked, in evidence, for that to be done as early as possible. When remediation works have been identified and planned for, could a building be put on the register to give owners, lenders, buyers and so on assurance that it is on the register? Would you support that, or would you insist on waiting for the work to be done before a building is put on the register?

Paul McLennan: I will bring in Kate and Rachel on that point. That issue has been raised by developers. We talked about what the SBA process looks like, when the entry goes on the register and by when we should ensure that the work has been carried out. That has been picked up by residents. Part of the issue in the bill is that you could, hypothetically, get a developer to sign a developer commitment letter or a contract, but one of the key points is that, if a company does not carry out the work, there must be sanctions available to us that might result in the developer not being able to develop in Scotland. That is the ultimate sanction, although I do not think that we would get to that point.

Kate Hall: I read the evidence sessions on the issue, and I understand some of the drivers.

However, there is, from our perspective, a fundamental safety issue to take into account. We do not name the buildings that are in the programme, because there would then be a potential fire safety risk for residents. That approach follows engagement and discussion with the Scottish Fire and Rescue Service. Unfortunately, risks can arise if we say publicly that there is a fire safety risk in a building. We spoke a couple of weeks ago to residents of a building and heard that there had been a fire-starting, or arson, incident there.

We therefore need to be really careful. We would be wary of putting on the register buildings in which risks had been identified but not yet remediated. The information would be going out into a semi-public domain, which could lead to risks for residents, so we need to strike a balance in respect of the point at which we put out information about fire safety risks.

As a result, our preference is to identify and remediate the fire safety risk, then, at that point, to make information available to make it clear that there was an issue that has been resolved. That would ensure that there would be no risk to the residents of such buildings from the information being in wider circulation.

Paul McLennan: I suppose that a couple of issues arise. First, on the SBA process, I understand that there will be a degree of frustration with regard to getting buildings on to the register, given that doing so moves things forward for residents, for developers, for insurance purposes and so on. It is important that we get through the SBA process, because we can start with remediation, get buildings on the register and so on. In its basic form, this is about getting to buildings that have just been built and have not received building safety certificates. The question is: when is a building safe? The key thing is to ensure that it is safe when it is signed off.

Again, we have been discussing with developers how quickly we can move through the process and get buildings on the register, because that is what will reassure developers and residents, and it is what will address the issues that we have been talking about, including insurance, remortgaging and the sale of buildings. Developers have been raising such issues quite often, and we are working with developers to get those issues through the process as quickly as possible.

Willie Coffey: That was clear enough.

As you will probably have heard, the Law Society of Scotland raised a number of issues of clarity of definitions in the bill. It gave a number of examples in which it feels that there could be scope for misinterpretation. For example, it asked what the phrase “or otherwise undergone development” means, and highlighted other issues with regard to the definition of “risk”—in particular, the phrase “risk to human life”. It gave a host of examples of definitions that might lack a little clarity. Is the Government aware of that, and is it looking to try to define, sharpen up, polish or whatever, the bill’s terminology in order to assist everyone?

Paul McLennan: I read what came up in that respect. I will bring in Micheila West in a wee second, but I will say that we are listening to the concerns that are being raised and, as we progress with the bill, we are looking at how we ensure that such concerns and issues are addressed.

Micheila, do you want to address the particular point from the Law Society of Scotland?

Micheila West: Yes—sure.

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

Willie Coffey: The Law Society also helpfully suggested that the Government might consider determining that some buildings fall outwith the scope of the SBA process and carry no risk whatever, because that would aid purchasers, mortgage lenders and so on in the buying and selling of some buildings. The society feels that if that does not happen, processes could be delayed for buildings that are essentially safe.

Paul McLennan: Again, that is a good question. In our discussions with developers, they have identified not only buildings that should be in scope but those that they think should not be in scope. There is a balance to be struck with regard to getting the buildings that are in scope through the SBA process and remediation done. Buildings being out of scope is incredibly important, because saying that that is the case will reassure residents in buildings that might or might not be in scope.

I do not know whether Rachel Sunderland would like to add anything, but the issue has certainly been raised by Homes for Scotland and developers. It is, as I have said, about striking a balance between making safe the buildings that are in scope and giving reassurance—a sense of relief, if you like—to developers and residents in buildings that are not.

Rachel Sunderland: Kate Hall might want to add something. There are a couple of layers. First is the scope of the programme, which is clearly set out in the bill. That is helpful in the first instance in saying, for example, the height of buildings to which the provisions will apply and in making it clear that they do not apply to other buildings.

There are buildings that would potentially fall within scope but, once a light-touch assessment has been done, it can be seen that they do not really need any work. They still need to go through some kind of assessment, but a building’s having been assessed does not necessarily mean that things need to be done. The bill allows for a single building assessment to find that nothing needs to be remediated. A building could then very quickly—straight away—go on the register.

There is a challenge in the idea of the register seeking to include everything that is potentially out of scope, because that appears almost to negate the process. We will not have assessed those buildings, so we will not know whether other things that are not to do with cladding might be issues for a building, because we are not looking for those things.

We can do things about clarifying the scope and, if we do a single building assessment and it is fine, the building can go straight on to the register and the issue becomes about how quickly we can get through remediation. However, we also need to be really clear about the purpose of the cladding assurance register. It is not about providing assurance to the broader sector about the safety of buildings.

Willie Coffey: If those types of building do not go on the cladding assurance register, where do they go? Where will the public get that information?

Rachel Sunderland: That is a broader issue of building safety, such as is being worked through with building safety colleagues on the back of RAAC and other issues, which are not necessarily about cladding assurance. It is very important but it is not the purpose of the register. However, we can pass that back to colleagues if that would be helpful.

Willie Coffey: It is good that that is being considered by the Government. We will have to deal with it in some way. Thank you.

Stephanie Callaghan: In evidence, we have heard calls for more detail in the bill on the responsible developers scheme. However, there has been a debate around that. Some say that the bill is too broad and relies too much on secondary legislation, which could come too slowly. Others state that the bill is too narrow and that it should be a framework bill, as long as the secondary legislation follows quickly. What are your reflections on that, minister? Might draft secondary legislation be available during parliamentary consideration of the bill?

Paul McLennan: You are right about that debate. To put it into the broader context, the responsible developer scheme follows the model in England and Wales. That is a really important part of the legislation for me and for the developers. The first stage of that was talking about the commitment letter, which was, in a sense, about them publicly coming out and saying, “We are working with you on that.” The remediation contract itself is another step. The responsible developer scheme then gives us powers in relation to what happens if the work does not get carried out. That is important, because it gives us the ability to look at sanctions.

As I said, we have not had any issues in terms of developers coming to speak to us. None of my individual discussions with developers has involved them saying that they do not want to be part of this. They have all been keen to sit down, engage, be collaborative and work with us. It is important to give that context. They have all been very supportive when working with us because they know what they need to do for, first and most important, the residents, but also their own outlook. If they do not carry out the work, there is that reputational risk. The responsible developer scheme gives that sign and gives us the powers to do that.

10:30

I will bring in Micheila West on the legislative issue that has been raised. However, part of the consultation discussions that we have had have been about not teasing out but trying to look at the attitude of the sector itself. The sector has been very helpful in working closely with us on that. It also wants to move as quickly as it possibly can.

Micheila West: The responsible developer scheme section in the bill is a framework power to allow ministers to create regulations—specifically, affirmative regulations—that would be brought back to be considered by this committee.

Kate Hall or Rachel Sunderland may also want to come in.

Rachel Sunderland: There are probably a couple of things to note. Stephanie Callaghan has raised the point about how to get the balance right between what you put in primary versus secondary legislation, and there will be differing views about that. We have tried to set out in the primary legislation the types of things that will be included in the secondary legislation, to give the committee a sense of where we are going. As Micheila West said, we will bring that detail back to the committee to consider through affirmative regulations.

We have also looked at the approach in England and learned from that a little bit, as they did the primary framework legislation and then the regulations.

The regulations also allow us to link it to the on-going discussions that we are having in relation to the developer remediation contract. We would expect to see very close alignment between what we agree in the developer remediation contract and the regulations. It also allows us to put a level of detail in the regulations that we would not normally expect to see in primary legislation, and to reflect back some of the other moving parts in relation to this that we have already talked about to give—we hope—that degree of certainty.

Paul McLennan: A lot of the process has been reflective, both when we introduced the legislation and in the discussions that we have had. For me, it has been very much a partnership approach right from the outset. It cannot just be Government going in and saying, “We need this, this and this.” Of course, there is that element of negating the risk, which is the most important part. However, more generally speaking, it has been reflective and it has been about making sure that there is as much of a partnership as possible.

When there have been more discussions, I am happy to write to the convener on how things are progressing as the bill process continues.

Stephanie Callaghan: It is good to hear you highlighting that, including the point about talking to the developers in the first instance. I know that there have been issues around having to look at making changes to the primary legislation in England. Obviously, we do not want to be in that position.

Paul McLennan: On that point, I have been at meetings at the ministerial level, and officials regularly have discussions with UK Government and Welsh Government colleagues. We have also already had the Northern Ireland Executive—which has obviously just been reformed—speak to us about what lessons it needs to learn from that. It is very much a four-Governments approach and process in relation to that learning. There are discussions going on all the time about lessons from the UK Government and Welsh Government in relation to what we need to do. It is also raised in the ministerial Government meetings that we have.

The Convener: Before you move on to your next question, Stephanie, Mark Griffin has a brief supplementary.

Mark Griffin: As we are talking about the developer remediation contract discussions—I also brought this up when the officials were here—how much further down the line are you with discussions with developers, particularly in relation to the Government’s thinking about how it will treat small and medium-sized enterprise builders, in line with what the UK Government is doing down south?

Paul McLennan: That is a good point. The SBA process in relation to the remediation contract is really important. That process is almost a dual process. As well as discussing the SBA process, discussions are already going on about remediation and how that SBA process feeds through to the remediation contracts, for example.

When we looked at that, we were doing so almost in terms of the different waves of the programme, focusing on the larger companies first. I have also been having discussions with

SMEs on that. One of the statements that I made at the start was about that individual approach. We know that SMEs are in a difficult position in relation to house building at the moment, so there is a balance in how we discuss this with SMEs to make sure that it does not put their business at risk in what is a difficult trading situation across the UK at the moment.

Discussions are being held at SME level on the SBA process and the remediation contracts. For SMEs, knowing about their ability to pay is really important, so there are discussions on how we can look at that. Those discussions involve not just SMEs as a sector but individual companies. The discussions with individual companies have been helpful—I know that they have appreciated that, because we have had feedback directly from them on that approach.

When we started the process with Homes for Scotland, we made it clear that the SME sector is important and that we were not taking a one-size-fits-all approach. It was very much about looking at the sector. We need to be more cautious in how we deal with the SME sector as a whole, but we also know that their individual circumstances are all different. We have tried to get a balance in how we proceed with them.

The approach to UK public limited companies and the larger Scottish house builders will be different from the approach to SMEs. We need to be cognisant of that, and we are working closely with SMEs. We will have continuing discussions with them on the SBA process and how that moves towards a remediation contract. As I said, I know that that has been appreciated, because we have had direct feedback on that.

I do not know whether Kate Hall or Rachel Sunderland wants to add anything.

Kate Hall: As the minister said, those discussions are live at the moment. We are listening to the views of SMEs on ability-to-pay matters. We are starting from the premise that we seek some sort of contribution from developers, but we are seeking to find a proportionate and balanced response. We want a response that is mindful of the position of SMEs in the marketplace and that considers their role in the wider economy in Scotland and their ability to continue to play an active part in building houses in Scotland. Those discussions are on-going, and we are having regular meetings with SMEs to discuss the particulars of their situation.

The Convener: Stephanie, do you want to come back in?

Stephanie Callaghan: Yes, please. Mr Griffin has just picked up on the question that I was going to ask, but I have a follow-up question.

Minister, are you considering making provision for a profit threshold for SMEs? Has that been ruled out or is it not really on the radar?

Paul McLennan: I will bring in Kate Hall or Rachel Sunderland in a moment.

In the discussions that we have had, we have considered the approach that the UK Government has taken—there are on-going discussions on that. We have been talking to the SMEs, including in the Homes for Scotland context, about what that looks like.

This is a really important issue, so I am not just looking at the SME sector as a whole. We are speaking to individual developers and asking them where they sit. Even though we are considering a similar approach to that of the UK Government, our approach has to be based on what the developers tell us. There is always a balance: we want to remediate buildings as quickly as possible, but there is not much point in doing that if we lose five or six developers as a result of their not having the ability to pay.

That has been a really important approach. I emphasise the individual discussions that I and officials have had. As I said, our door is open. This is very much a partnership as we move forward, and we need to learn about that through the pilot programme.

Rachel or Kate might want to come in on the point about the profit threshold.

Rachel Sunderland: That is a good example of where we are looking closely at what has happened in England and in Wales. England and Wales have both adopted a profit threshold of £10 million over three years for their main developer remediation contract. However, in Wales, in addition, an approach has been put in place whereby smaller developers also make a contribution. That was set out in a statement to the Welsh Parliament back in November.

We are looking closely at what has been done elsewhere and how we can learn from that while ensuring that our approach is appropriate to the Scottish market and context. We are considering how we balance the need to get value for money for the taxpayer with the need for financial stability for the market and individual developers.

Paul McLennan: Another important point, which we have not touched on so far, is about the building safety levy and how it develops over time.

That is not my area of responsibility, but I work closely with the minister who is responsible for that and I have been involved in but not led discussions on the building safety levy. Developers are aware of the levy being introduced and what it will look like. We are working closely with UK Government colleagues on that.

It is important to set this in the context of the broader, longer-term outlook. We are working closely with UK Government colleagues on how to introduce that legislation. Discussions are already under way with developers, who might have slightly different people at the meetings—perhaps more on the finance side. Those discussions are taking place in parallel with what we are doing already as we look towards introducing the building safety levy.

Stephanie Callaghan: Although making provision for a profit threshold sounds like a nice, simple solution, perhaps the situation is a lot more nuanced than that and not as straightforward as it might seem.

Paul McLennan: Again, it is about learning lessons. Down south, the UK Government has gone through the same process. There will be SMEs at certain levels. We all know where the threshold sits for SMEs, but where do the different SMEs sit within that? It is important to have the broader discussions with Homes for Scotland and SMEs, but we also need individual discussions to learn what it looks like for different SMEs. That is an important part of getting to the nuanced position as we learn from the pilot programme and go forward.

The Convener: I will now bring in Marie McNair, who joins us online.

Marie McNair (Clydebank and Milngavie) (SNP): Good morning to you and your officials, minister. Over the past few weeks, a number of witnesses have raised concerns about a lack of qualified professionals who are able to undertake single building assessments and the cladding remediation work. Do you share that concern? If so, how will the Scottish Government address it?

Paul McLennan: That is a good question. When I came to the committee in May, if my memory is correct, that issue was discussed. It is part of broader discussions on the number of fire safety colleagues, in relation to not just cladding but broader issues. The UK Government also faces an issue in relation to that, which we are aware of. The issue is raised in other working groups on building safety, not just in relation to the buildings that we will have on the cladding register but beyond that, because of the issue that I mentioned.

We are aware of the concerns. We are talking to UK Government colleagues about the lessons that they have learned. Again, it is about the scale of the pilot and what it will look like when we move beyond that. I know that there have been discussions with fire safety colleagues and representatives of the trade, but we need to take cognisance of the concerns because, when we step up the pace, we need to ensure that there are

fire safety people there to undertake the assessments.

I do not know whether Rachel Sunderland or Kate Hall wants to come in on that.

Kate Hall: We have been engaging with other bodies, including the Royal Institution of Chartered Surveyors, which, in its evidence to the committee, took the view that a lack of professionals is not an issue at this point. At this stage, we have not found it to be a barrier to being able to move forward with the programme, but, as the minister said and as we said in the evidence session in December, we will be mindful of the importance of ensuring that there is a thriving supply chain of people who are able, for example, to carry out assessments and then follow through with remediation.

It is an on-going, live issue and one on which we continue to engage with the sector and those who would provide those services in due course, so it is obviously part of our continued planning for any subsequent national roll-out once we move beyond the pilot phase of the work.

Marie McNair: What funding commitments does the Scottish Government plan to make over the next few years to support cladding remediation work?

Paul McLennan: There are a number of things to say on that. It is very much demand led, which is one of the key points that we are considering. There is a discussion about what the programme will look like in the next year or so. In the past number of months, the spend on it has increased as we have done more work on the matter, and it is important to do that.

The figure for 2024-25 is £41.3 million. As I said, it is very much demand led. That cost is not just remediation; there are other costs involved as well. That is the figure that has been set aside in that regard at the moment. As I say, it is very much demand led. Hopefully, if we quicken the pace, we will see where that leads us in 2024-25. It is a substantial increase on previous years, as we get more into the programme.

10:45

The Convener: Thank you for those questions. I will follow up on both of them.

On the funding commitment, you say there will be £41.3 million. I understand that it is demand led and I presume that the fund will increase as the demand increases. However, we heard that there is an estimated cost of £40 million to remediate just one building that we went to see. I am concerned about that number.

Paul McLennan: That will be subject to the budget process that we are going through just now. Sorry, I did not pick up the first point in your question.

The Convener: It was just about the funding commitment. You pointed out that there is £41.3 million, but we visited a building for which it is estimated that about £40 million is needed to remediate it. From what you said in your previous answer, I understand that it is demand led and there will be more money coming, but, at the moment, that would be the amount for just one building. Obviously, different buildings will require different amounts.

Paul McLennan: We have to separate out remediation work on orphan buildings, which have no owners, which the Scottish Government needs to pick up, from remediation work on buildings that have a named developer, which the developer picks up. We know about the developers that we have, but we also know the number of orphan buildings, and there is other expenditure outwith that.

For the remediation of buildings by a named developer, the developer commitment letter and the remediation contracts are incredibly important. We need to sign them up to make sure that they do the work that they plan to do. Companies have publicly set aside moneys in their accounts for cladding remediation, so the developer should be setting aside money for that one building that you mentioned. There are issues with regard to expenditure around about that, but the actual remediation should be done by the developer itself.

We know about the issue with orphan buildings, which involves a different approach. Last week, we met residents in a certain part of Scotland, who were talking about this and asking, "Look, we are in an orphan building. Where does that sit? Does that put us down the priority list?" The answer is no. We gave them the reassurance that, just because it is an orphan building, it does not go to the bottom of the queue. In some ways, it is a lot easier to move forward with remediation if the developer is there and it has set aside a sum of money. The developers are all in that position.

With SMEs, nuanced discussions are important, but the large-scale developers have all set aside a considerable amount of money, and have publicly done so, for their remediation contracts.

The Convener: Great. I just wanted to make sure that we had a reality check on the scale of the finance that is needed.

On the previous question around the lack of qualified professionals, we heard in an evidence session that Glasgow Caledonian University has a course, which is the only course in Scotland, but it

is due to come to an end. I would be quite concerned about that if we need to bring on more professionals.

We also heard that people are going to England because work is moving ahead more quickly there. How do we ensure that we have a sufficient pipeline of people who can take on this work? We have this emergency bill and we are taking evidence quickly so that it can move forward but, if we do not have the professionals, we will run into a problem.

Paul McLennan: We previously talked about the ministerial groups. There were discussions with other bodies about the SBA process, and we are quite confident about it.

There are ministerial groups covering more extensive building safety. The issue has been raised in those groups, so an eye is being kept on it as things develop. For example, the RAAC situation kind of came out of the blue for everybody a number of months ago, and we had to deal with that at that point. Those ministerial groups look at the more extensive building safety regime in Scotland.

There is always a question whether we have enough qualified professionals, and there are discussions about work with colleges and universities with regard to what is required. However, we are comfortable with what we have in place. It is not just about considering where we are now; it is also about what future demand is likely to be here and in the rest of the UK.

Rachel Sunderland: I will add to what the minister and Kate Hall have said.

I reassure the committee that we talk about that issue; indeed, we discussed it at the most recent cladding stakeholder group meeting. RICS, which is a member of that group, talked about some of the measures that it had put in place at the UK level to try to grow the market, and it certainly expressed a degree of confidence in that discussion.

We have explored the issue, we will come back to it, and we regularly keep it under review. There is no complacency, but we did not pick up from our discussion in the stakeholder group that people were flagging that up as a significant issue. It was a concern that one member of the group raised. It wondered whether that should be something that it should be concerned about, and a degree of reassurance was given by others around the table.

The Convener: Okay. Thank you very much. We might take that further, because we maybe heard something a little different in our evidence sessions. Maybe we will highlight that in our report.

Paul McLennan: I am happy to come back to you on that, convener.

The Convener: Okay. Super.

Miles Briggs (Lothian) (Con): Good morning, minister and officials. I have a couple of questions that are a bit scattergun, but bear with me.

I want to go back to our previous conversations about other private entities. Has there been a conversation about other private entities—for example, organisations that design, manufacture and install cladding systems—being required to help to fund cladding remediation? Is that too complicated for the current system?

Paul McLennan: I will bring in officials on that question, too.

There have been a number of cases. With regard to some of the developers that we have spoken to, there are different ownership models. There are historical developments. How has a company developed from where it was 30 years ago to where it is now? That becomes difficult. When it comes to individual discussions, where is the proof of liability? That becomes hard. I know that there have been discussions about design standards, which were probably okay at the time, but where do they come in now? It is about when a building was designed as opposed to when it was built. We are looking at the past 30 years. Some buildings will just be at that 30-year level.

I know that that issue has been discussed, but the question of who takes the action becomes really difficult. Should that be the companies or the Government? That becomes really difficult legally. I do not know whether Micheila West wants to come in on that. I will bring in Rachel Sunderland and Kate Hall on the discussions and Micheila West on legal things that have been discussed.

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

The UK Government is separately doing work that is looking at manufacturers, and it has taken some steps in relation to manufacturing at the UK-wide level. There are different layers to this. There are elements that are within the Scottish Parliament's competence that we are able to progress.

Miles Briggs: That is helpful. Thank you for that.

During the investigations that we have undertaken, specific concerns have been raised

about electric cars and bikes in buildings that will be part of the scheme. What discussions are taking place about car parks underneath those developments specifically? There has, quite rightly, been quite a drive to have more electric vehicle charging points fitted, but there are not necessarily any regulations on what that will look like. Will that be considered as the bill progresses? There were quite serious concerns. Factor management is involved. I know that that is not specifically part of the bill, but there are various issues that relate to how management around that will be taken forward. Has that been picked up? Will it form part of what is coming?

Paul McLennan: I will come back to the broader discussions. You made a point about underground car parks. There have been specific cases in which action has been required. I spoke earlier about our discussions with other stakeholders; we had to get their agreement before we could do anything about that issue. If a building is at immediate risk, the legislation gives us the ability to take action. There will be consultation, but we will have the power to go and do something, whereas, previously, we did not have that power. We looked at a previous case where things had happened quickly but a period of consultation with other stakeholders was still needed to move things forward. The part of the bill that deals with that is important, because it gives us the ability to act on buildings at immediate risk. We have discussed that regarding individual buildings.

The factors play a really important role. There have been some mixed experiences, which is part of a broader issue with factors. Some residents have been very supportive of factors, whereas some have not. There is a raised awareness of the role of factors and of the broader issue of building safety, particularly fire safety in underground car parks.

The discussion is about not only cladding but overall fire safety. The issue of fire safety needs to be picked up in regulation. If we remediate the cladding issue but there is still a fire risk, there is still an issue. There is existing legislation about that. There are lessons to be learned and we have had experience of having to take almost immediate action to make buildings safe. We have learned from that, and that was also helpful for other stakeholders such as local authorities and the fire service. We work closely with those key stakeholders.

Rachel Sunderland or Kate Hall may want to add more.

Kate Hall: As part of the SBA process, we will be looking at direct and indirect risks that are related to, or exacerbated by, cladding. The SBA would make recommendations about what should

be done with the cladding and about how other elements of the building could contribute to that process.

As the minister said, we must be mindful of the arrangements for buildings that do not have cladding, to ensure that there is a level playing field and a consistent approach to wider building safety.

Miles Briggs: That is helpful. I have previously raised the issue of hotels, care homes and student accommodation, where people are sleeping. Is the Government minded to include those places in the bill, as they have been in legislation in other parts of the United Kingdom? What plans are there for those buildings?

Conversations that I have had suggest that work is progressing for student accommodation, but I have specific concerns about hotels, care homes and other buildings over 11m in height not being included. What is the Government's position?

Paul McLennan: The pilot was set up to look at high-risk buildings, and ownership was one issue initially. I am aware that you have raised this issue before. Some building safety regimes are already in place and we have learned the process. When we discussed this in May, we did not have to deal with the RAAC issue, which was just coming into view. We were looking at how safe our schools are. I am not saying that there is no on-going building maintenance at schools, colleges or universities; there are regimes in place and we know what those look like.

There is a broader building safety group that looks at those issues. Kate Hall or Rachel Sunderland may want to talk about that. There is already an established building safety regime. Rachel or Kate may want to touch on the other things you mentioned.

Kate Hall: Those buildings have an identified owner in a way that is distinct from domestic premises, where the freehold tenure system makes enforcement less straightforward.

The aim of the bill is to overcome the gap that has been identified. Buildings such as schools are obviously the responsibility of local authorities, and, for hotels and care homes, there is a responsible owner who has statutory duties that they must fulfil in that respect. We are trying to focus additional effort into areas in which there is currently a gap in arrangements. Perhaps my colleagues will want to add more.

11:00

Rachel Sunderland: The only thing that I would add is that we talk quite closely with officials in England and Wales, and our understanding is that, in England, they gather and publish data on

hospitals, care homes and hotels, but they are not formally part of the programme as such. Similarly, the minister mentioned the ministerial working group on fire safety, which is an overarching mechanism; health colleagues go to that group and talk about the work that they are doing on remediating their buildings. Do we know what is happening in those places, and do they need to be a formal part of the process? I think that, informally, they are part of the process, as Kate Hall has mentioned. They do not have the same kinds of challenges, because they have a single owner who can take on the responsibility, and we see that they are doing that.

Miles Briggs: In reality, such buildings almost have a version of a night-watch in place. However, we need to consider how hotels and student accommodation are regulated and how fire evacuation programmes are managed. Perhaps some of the work that is going on in England should be replicated up here. That might require a wider piece of work that goes beyond the bill and includes the factor management aspects of these buildings that we have discussed.

Paul McLennan: The building and fire safety group has specific discussions on those points to ensure that the regimes and building control system that are in place are monitored. It is really important that those issues are picked up. We will obviously continue to have discussions with the UK Government on what it is doing; there are on-going discussions on a number of issues. However, as I said, the ministerial group on building and fire safety picks up those issues.

Obviously, we have learned lessons from what the building safety regime looked like for RAAC, which, in a way, came out of the blue. We must make sure that nothing comes as a surprise, so there are regular discussions about that.

Miles Briggs: In the interests of transparency, will the Government consider including a requirement in the bill for the Government to report regularly on the progress that is being made on the remediation programme? I want to scrutinise the finances around the bill. The minister has said that £41 million is available, and I think that the Scottish Government has £97 million in Barnett consequential. As a committee, we are interested to know where that is being spent and for that to be reported back to us.

Paul McLennan: We have published the figures on the spend, and we will continue to do so as we go forward. We have been as open and transparent as possible on that. We have talked about the split between orphan buildings and remediation by developers, and there is commercial confidentiality in that. Again, perhaps that could be part of what we publish on our own building programme, which we will continue to

publish on an on-going basis. I do not know whether Micheila West would like to touch on where that sits within the bill. It is not something that I am aware of.

We have certainly been, and will continue to be, open and transparent about the spend, and I expect to see a significant increase in that as we get through the SBA process and into the long-form contract that we have talked about. Perhaps Micheila West would like to add to that.

Micheila West: I will let Rachel Sunderland come in.

Rachel Sunderland: The minister has said that Scottish ministers have previously committed to publishing data quarterly. That remains a commitment. We will probably want to consider what other information we might publish. In England, for example, there is a regular and proactive publication schedule, and I am sure that there are things in that that we could explore. It would probably be difficult at this point to put that into primary legislation or to commit to what that would look like, as opposed to continuing with the principle of looking at what we could proactively put into the public domain that would be helpful to the committee—just as we have done with the quarterly publication—while also seeking to maintain the confidentiality of the buildings. However, there is a commitment to explore that. I do not know whether Kate Hall wants to come back in on that.

Paul McLennan: I will come back in on that. We have discussed coming back to the committee on a couple of points. I am sure that, after hearing the evidence, it will want to come back to us on some aspects, to outline its thoughts. In turn, we could respond through the convener.

Miles Briggs: That is good. Thank you.

The Convener: This has been such a good session, and it is bringing up more questions. I will bring Stephanie Callaghan back in.

Stephanie Callaghan: My colleague Mr Briggs has made some powerful points. The Grenfell tragedy involved a devastating loss of life that none of us will ever forget. The public were, rightly, horrified by it. However, last week, I found it reassuring that our witness Jim McGonigal said that the fire statistics for Scotland indicated that we do not have such a big problem here, in that only 1 per cent of fires spread. That is largely because of the really good work that has been done through coverage of the Scottish standards on fire alarms and other matters that have been brought in over the years. I absolutely do not mean to minimise either the need for the bill or the serious risks involving cladding, but are residents aware of, and do they understand, the existing

protective measures? Are they reassured by them?

Paul McLennan: That is a really good point. We mentioned that the ministerial groups have discussed the broader fire safety regimes that are out there, which is important. We also discussed the legislation on fire alarms that the Government has introduced. We can certainly take away your point about communications on the existing measures out there. It would be good to check whether people are aware of the regulations in the areas that you mentioned.

The fire service carries out a lot of work with, for example, residents and schools on broader fire safety issues, which I think is why we are seeing such a low figure on the spread of fires.

We can certainly take away your point, and we could consult stakeholders on communications about what is already out there. As the committee might have found, when we have previously had discussions with residents, those tend to raise awareness of the points explored. However, there is no harm in exploring further communications in the future. One learning point from the pilot programme is that, as we move into a larger-scale programme, we must examine what that looks like and what we can do right at the start of the process to ensure that people know what is already out there. If people do have an issue, where should they report it to? Should it be to the factor, the developer, the fire service or the local authority? There is certainly an element that we can take away and come back to the committee on.

Stephanie Callaghan: It would be great to hear further feedback on that. You have spoken about raised awareness among residents. However, sometimes there is a vocal group of them and perhaps another more removed group that is not quite as involved and perhaps does not have a full understanding. After we went out to visit flats in Edinburgh, I felt that, had I had news that there was similar cladding on my flat, I would have been quite panicked at the thought of it. It would be good to know a bit more about that.

Paul McLennan: You are right. As you know, some buildings might have 200 or 300 flats. Some flats are rented out by people who might not come back to them for a number of years. If work needs to be carried out, we must ensure that that is carried out.

As the committee will probably have seen, in Edinburgh, we tend to have a mix of properties. I know that, in Glasgow, which I have visited, people rent out properties. There are therefore various ownership models. We must ensure that we take account of that. Factors have told us that they have issues on communicating with people

who rent out their buildings, for example. If work needs to be carried out, going through the tenant might be one way of resolving that, but actually getting to the people who own the buildings is a different matter. We must be aware of that broader communication aspect. Again, that is where the communication protocol and how we deal with such matters are important.

There are therefore points for us to take away on those issues. I will be happy to come back on any thoughts or any feedback that the committee might have.

Stephanie Callaghan: Great. I look forward to that. Thank you for allowing me back in, convener.

The Convener: Minister, thank you very much for joining us for what has been a useful, constructive session. We have had clarity on a number of issues, and we will certainly highlight some points in our report. We very much appreciate your joining us.

I will now suspend the meeting briefly, to allow the minister and his officials to leave.

11:09

Meeting suspended.

11:11

On resuming—

Subordinate Legislation

Non-Domestic Rate (Scotland) Order 2024 (SSI 2024/3)

Non-Domestic Rates (Levying and Miscellaneous Amendment) (Scotland) Regulations 2024 (SSI 2024/4)

Non-Domestic Rates (Transitional Relief) (Scotland) Regulations 2024 (SSI 2024/5)

Council Tax (Dwellings and Part Residential Subjects) (Scotland) Amendment Regulations 2024 (SSI 2024/10)

The Convener: The next agenda item is to consider four negative instruments. There is no requirement for the committee to make any recommendations on negative instruments. Do any members have any comments on them?

As there are no comments, does the committee agree that we do not wish to make any recommendations in relation to the instruments?

Members *indicated agreement.*

The Convener: We previously agreed to take the next three items in private, so I close the public part of the meeting.

11:12

Meeting continued in private until 11:49.

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