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SPF Response to Housing (Cladding Remediation) (Scotland) Bill

1. Do you think this legislation will deliver quick and cost-effective remediation of potentially flammable cladding systems found on some modern blocks of flats in Scotland?

Not necessarily. The Bill is clear in the power it provides for Ministers to enforce works following an appropriate assessment of external wall cladding for eligible buildings. But the practical Single Building Assessments and remediation of some 5,000 medium high-rise properties cannot be done easily or quickly and the legislation will not affect that. There is simply a shortage of this skill set within the country. Therefore, we believe there will be financing and construction capacity issues for a sector that already struggles to supply enough contractors for building works. The legislation and policy documents also recognise that where residential buildings are in multi ownership there are likely to be practical hurdles in identifying and contacting all relevant owners. Some remediation works have of course already begun or been delivered but the greater numbers of buildings to be checked for remediation will make this a lengthy process.

We cannot comment on the costs in respect of any future Building Safety Levy as this will await further legislation, as noted in the Policy Memorandum.

2. What, if any, amendments could be made to the Bill that would further speed the delivery of cladding remediation?

It is not legislation that is the shortfall – it is the qualified builders, finance and the administrative processes that will mean that full remediation for all residential buildings with eligible cladding is unlikely to be quickly achieved. And as we note in our answer to Question 5, there will be the practical challenge in some circumstances of where to house occupiers required to leave homes under remediation.

3. Do you think the Register will resolve the challenges around re-mortgaging, buying, selling, and insuring properties with potentially unsafe cladding?

We believe the Bill will help to resolve these issues. It is helpful that there is a clear process of what will be done. It will also be important to raise awareness of the Cladding Register too for remediated buildings. Until works are complete however, there is likely to be a stigmatised sector of the built environment.

4. Are there any other measures necessary to respond to these challenges?

The alignment of local property data, ownership records and building standards services will be critical to make remediation as effective a process as possible. Owners may well find it difficult to access the financing necessary for remediation works and it may be possible for authorities to support with loans or possibly support via council tax relief where appropriate.

We are concerned also that the process might disproportionately have the effect of delaying the delivery of new homes by developers regarded as uncompliant with the Responsible Developers' Scheme. This would potentially have the consequence of negatively impacting individuals or businesses unfairly as they will have no connection to the developer or problematic cladding.

5. Experience shows that it can prove difficult to secure consent for cladding remediation work from all owners within a block of flats. Do the provisions in the Bill adequately address this issue? If not, what changes need to be made?

We have alluded to this legal and practical issue in our earlier comments. The government clearly recognise that there is an issue and unlike England, where there may often be an overarching freeholder for a block of flats who can be easily identified, then unless it is a block owned by a major landlord, institution or other major owner, it is likely to be a challenging job to contact and achieve consent with all relevant homeowners.

Local and other authorities (for example any landlords who may be tackling eligible buildings), will also be required to consider where occupiers are required to leave their homes, which is provided for within the legislation, as to where they will be housed in the interim. There is already a housing crisis so this practical issue should not be overlooked. This does not negate or remove the necessity to make buildings safe, but the issues identified in questions 1-5 could prove to add significant delays and costs to the requirement to remediate.

6. Are the appeal mechanisms and timescales for those appeals sufficient?

Whilst the timescales are brief it is understandable given the gravity of the situation. Our members have suggested the appeal mechanism to the Sherrif Court is reasonable but given the intricacies of the cladding issue as a whole, the appointment of a specialised Sheriff in each judicial district should be appointed.

7. Do you think this scheme will expedite the process of remediating buildings with potentially unsafe cladding?

Overall, the scheme will help to guide the industry and ensure the necessary steps are taken to address unsafe cladding within buildings. But the pace of the remediation process will ultimately depend on capacity and funding where organisations may face delays in securing finance for remediation costs which in turn could lengthen the process. Navigating the complex regulatory

nature of the Bill in addition to the understanding the technicalities of modifying existing structures could also extend the timeframe. This is likely to be compounded by the shortage in skills in the sector (as previously mentioned) needed to plan and carry out works. A challenge repeatedly reported by members is determining the legal liability of remediation costs where there are multiple individual owners within one building. There may be instances where negotiation is required to determine how the costs will be allocated among owners. While the scheme is well-intentioned in expediting the process of remediating unsafe cladding, it is important to be realistic in that the pace will also hinge on other logistical, financial and legal factors.

8. Do you think it is proportionate to prohibit developers who fail to comply with the schemes terms from carrying out major developments and gaining building control sign-off in Scotland?

It is imperative that action is taken to ensure buildings are safe and there is a fair and proportionate remediation process. However, we think this is a rather disproportionate punishment which could lead to adverse unintended consequences for both the developer and buyer communities. For instance, in the event that a site is nearing full completion and reaching the sales stage, or where buyers have made the transaction already, the developer and the buyer are expected to face significant financial penalties should the development fail to secure building control sign-off. There could also be other knock-on effects such as a reduction in local employment, investment and new buildings coming forward.

9. Much of the detail of the scheme is left to secondary legislation. Should more of the detail be on the face of the Bill?

The Bill refers to the introduction of a Responsible Developers Scheme, but we are concerned that exact provisions of this are left to secondary legislation. There is nothing to indicate what proportion of the remediation costs are expected to be incurred by the developer. We are also concerned with the Bill's description of those who are expected to be part of the scheme as having a 'connection' to unsafe cladding. This description is vague, and we ask for further clarity on who exactly would be part of the scheme. We are also concerned at the possibility of wholly unrelated transactions and home purchase being adversely affected if a developer is found in breach of the Scheme where a person may be denied a property they have purchased because of an historic connection between a developer and a building assessed as requiring remediation.

10. Is there a need to make provision for non-residential buildings with potentially unsafe cladding?

It will be important to be clear with the industry and wider public authorities about the scope of the buildings to be eligible for a Single Building Assessment. For example, purpose-built student accommodation and employment related accommodation. We are not persuaded that this is currently the case with the Bill.