

**Scottish Government consultation on Housing (Cladding Remediation) (Scotland) Bill**

**Response from Propertymark**

**December 2023**

**Background**

1. Propertymark is the UK's leading professional body for estate and letting agents, inventory providers, commercial agents, auctioneers and valuers, comprising over 17,500 members representing over 12,800 branches. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.

**Consultation – overview**

2. In response to the Grenfell Tower Inquiry, all nations across the UK were committed to establishing their own system for improving fire safety in high-risk buildings, to reduce the risk to life from unsafe cladding. The Housing (Cladding Remediation) (Scotland) Bill sets out how the Scottish Government will assess and remediate buildings of at least 11 metres if they have unsafe cladding. The Bill gives powers to Scottish Ministers to establish a cladding assurance register for all qualifying buildings to join if no remediation works are required once a single-building assessment has been conducted. Scottish Ministers have the power to arrange remediation works if required and to establish a Responsible Developers Scheme for the purpose of addressing or contributing to the costs of addressing remediation works.

**Propertymark response – summary**

3. Propertymark welcomes the opportunity to respond to the consultation on the Housing (Cladding Remediation) (Scotland) Bill. Generally, Propertymark supports proposals to ensure that buildings are free from unsafe cladding and the introduction of similar measures to reduce the risk of loss of life in high-risk buildings. Propertymark has worked with the Department for Levelling Up, Housing and Communities on the introduction of building safety measures in England, as well as the devolved administrations in Wales and Northern Ireland with their own legislation which are all at different stages of development. As such, we have a good understanding of the limitations of some of the proposals and their effectiveness. While we

agree with much of the Scottish Government's proposed Bill, there are some aspects that we feel would further strengthen both financially and from potential fire safety risks, including:

- Ensuring that the cladding assurance register is freely available and easy to access.
- Maximising protections for those living in multi-occupied buildings by limiting their contributions to remediation works.
- Providing clarity on remediation requirements on buildings constructed or where unsafe cladding was introduced prior to 1 June 1992 and after 1 June 2022.
- Providing clarity on financial protections for owners of flats, including homeowners and landlords who let these properties, to limit costs of
- Ensuring reasonable support for residents and landlords when a building is required to be evacuated.
- Clarifying the contribution to which developers are expected to make within the Responsible Developer Scheme, including any financial support provided by the Scottish Government.
- Provide additional clarity on the professionals or organisations in charge of assessing buildings and providing certificates, including where factors (managing agents) fit into this process.

### Questions

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

4. Propertymark agrees that the proposed Bill is a good way to deliver quick and cost-effective remediation. It allows for the Scottish Government to take a proactive approach to ensure that building owners seek to assess their properties and conduct remediation works so that their buildings would be added to the cladding assurance register. Considering this, it is essential that not being on the register has sufficient negative consequences to encourage building owners to conduct remediation works or to respond to notices. Failing to do so would mean that owners could choose to not remediate their buildings, especially if remediation costs are high. For this reason, would encourage that the cladding assurance register be open to the public. This has two main benefits:

- Firstly, if a larger number of people had access to the register, owners would be more incentivised to ensure their building met the criteria to be included. This is because the reputational loss would be significantly greater, and residents may consider selling their properties if more were aware that the building was not on the cladding assurance register.
  - Secondly, residents of the building could be encouraged to raise issues with their local authority if the register was freely and easily available. If the register was not easily available or came at a cost to residents, fewer would request access even if they believed unsafe cladding was present. By being notified from a larger number of residents, Scottish Ministers would be able to prioritise remediation works where they are needed and ensure that no building is left off the assurance register which would put residents at risk.
5. We would also like to highlight concerns we have over requirements to evacuate the premises. While we understand the need for residents to evacuate potentially life-threatening premises or premises where works necessitate their evacuation, there are potentially dangerous unintended consequences for evacuation both residents within these properties. We have three recommendations that would avoid unintended consequences of the legislation:
- Firstly, would recommend a larger notice period to allow residents who rent property within these buildings to find alternative accommodation. For renters, they may also need time to reach agreements with their landlords if works are expected to take a significant amount of time and they seek to end the tenancy. While seeking temporary accommodation is going to affect both homeowners and renters, this requirement is likely to impact tenants the most, considering the availability of rental stock. 14 days is often not long enough to secure alternative accommodation, leaving many renters without a home. 28 days' notice should ensure that all residents are more able to find suitable alternative accommodation. Additionally, all residents should be provided with the planned date in which they can expect to reenter their property and be notified if this changes so that they can regain access to their home.
  - Secondly, we would encourage that landlords receive compensation for any loss of rent. The disruption in rental payments may lead to a decline in available rental property and disruption for existing tenants without financial support. As mortgage

rates have increased in recent years, any disruption of rent payments may cause landlords to sell their existing portfolios, which could lead to the eviction of many tenants through no fault of their own. To prevent this, we would recommend financial compensation for loss of rental income be provided by the Scottish Government or the building owner while the property is evacuated. Additionally, the requirement for properties to be vacated could lead to complications regarding landlord insurance. We hope that considerations will be made and that discussions with insurance providers will take place to iron out any potential issues before the Bill receive Royal Assent.

- Considering the existing lack of supply of housing stock across all tenures, we would like to see clarity of support that the Scottish Government will provide in the case that a tenant cannot find alternative accommodation. Without adequate support, the need to evacuate properties could lead to residents becoming homeless.

**Question 2: Do you think the Register will resolve the challenges around re-mortgaging, buying, selling, and insuring properties with potentially unsafe cladding? Are there any other measures necessary to respond to these challenges?**

6. No, we do not believe that the register alone will resolve the challenges around re-mortgaging, buying, selling and insuring properties with potentially unsafe cladding. This is based off how difficulties remain across the UK with selling properties with unsafe cladding despite each nation implementing its own cladding remediation scheme. Propertymark members continue to raise that selling and mortgaging properties within buildings over 11 metres with potentially unsafe cladding remains a challenge, despite the existence of legislation addressing unsafe cladding. This is also despite commitments from UK Finance to remortgage these properties and the marketing of these properties as “cash only” by agents would be experiencing difficulties in mortgaging the properties. We would therefore recommend that the Scottish Government work with property agents, legal firms and financial institutions on this issue to understand where challenges in the buying and selling process remain in order to help open the market after this Bill is enacted.
7. A free and accessible cladding assurance register would also help to open up the market, as agents and solicitors would be more able to check if properties were on the register early on in the buying and selling process. This would prevent unnecessary sales fall throughs as potential unsafe cladding can be easily identified. Mandating outstanding single-building assessments or

cladding remediation works should be included within Home Reports would also help prevent fall throughs as detailed information about the property can be shared early on in the buying and selling process.

8. In addition to the requirement for the cladding assurance register to be free and readily available, Propertymark members have questions on who will assess properties and how certificates will be handed out. If assessments are going to be carried out at a local level, we would flag that local authorities will struggle with capacity especially in the short-term due to the demand and low supply of qualified assessors. In order to increase capacity of local authorities, we would recommend that completion certificates are handed out to the factor(s) managing the building. This will be much easier for local authorities to achieve, while ensuring all relevant persons receive the completion certificate, as factors will have the contact details of all residents and other relevant persons of the building.
9. This concern regarding the capacity of local authorities and identity of professional assessing the building also applies to the power to require information for single-building assessment and the register, as well as the power to require information to give notice. We have serious concerns over the capacity of local authorities to carry out these duties, if they are tasked with doing so, and would recommend that the individual or organisations charged with carrying out these duties work closely with factors to facilitate the request for information.

**Question 3: 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? Are the appeal mechanisms and timescales for those appeals sufficient?**

10. We consider that the provisions in the Bill adequately address the issue of securing consent for cladding remediation. We would highlight that previous remediation requirements could be approved with 60% approval of owners, which Propertymark members have agreed works in practice.

**Question 4: Do you think this scheme will expedite the process of remediating buildings with potentially unsafe cladding? 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? Much of the detail of the scheme is left to secondary legislation. Should more of the detail be on the face of the Bill?**

11. Yes, we believe that the existence of the Responsible Developer Scheme will help to expediate the process of remediating buildings with potentially unsafe cladding, especially if sufficient resources are dedicated from the Scottish Government to ensure that buildings with required works can be identified. We believe it is proportionate that developers should be prohibited from carrying out major developments in order to encourage remediation works to take place. However, we would encourage that developers receive financial support from the Scottish Government to ensure that they are able to fund the remediation works and that costs are not transferred unfairly to residents.
  
12. One aspect of the scheme that we hope can be included is protections for residents and owners of individual properties within buildings that require remediation. Currently, there is little additional information around who the Scottish Government expects to pay for remediation costs, beyond a contribution from the developer. We ask the Scottish Government to provide clarification on planned protections for residents and landlords from making large financial contributions to remediation works. Currently, there is no guarantee or detail over the extent to which landlords and residents would be protected from covering the costs of remediation works, with the Bill additionally only applying to buildings constructed or where cladding was installed between 1 June 1992 and 1 June 2022. This risks landlords and residents being charged for works they were not responsible for, especially if cladding was installed before or after the period in which the Bill applies to.
  
13. In response to the remediation scheme in England, Propertymark has been supportive of the Earl of Lytton's Building Safety Scheme, which would establish an independent body to identify who is responsible for building safety defects and would have the power to require the freeholder or developer to pay or fund payments through a construction industry levy<sup>1</sup>. We encourage that the Scottish Government establish a similar system where those responsible for building defects are required to fund them. At the same time, it can be considered unreasonable for developers not to be compensated for remediation works that, at the time of construction, were compliant. We would recommend that the Scottish Government provide

---

<sup>1</sup> <https://buildingsafetyScheme.org/6th-anniversary-of-grenfell-6th-tabling-of-a-consumer-protection-amendment-for-buildings/>

financial incentives for developers to become part of the Scheme, including financial support for remediating unsafe cladding.

**Question 5: Is there a need to make provision for non-residential buildings with potentially unsafe cladding?**

14. Yes, we would recommend that the Scottish Government consider investigating the potential risks of unsafe cladding in property that is not residential but where large numbers of people could be at risk of loss of life during a fire. Examples of these properties would include hospitals and office blocks.