

Scottish Government: Scottish Building Safety Levy Consultation

Response from Propertymark

November 2024

Background

1. Propertymark is the UK's leading professional body of property agents, with over 18,000 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.¹

Consultation – overview

2. The Scottish Government is seeking views on the design of a Building Safety Levy to pay for the cost of replacing flammable cladding from buildings over 11 metres in Scotland. This follows steps taken by the Scottish Government in the wake of the Grenfell Tower fire and the commitment from all UK Governments to retrofit all unsafe buildings considered high-risk. In England, the UK Government is intending to introduce a Building Safety Levy where developers pay into in order to recover the costs of remediation. Since the 2023/2024 Programme for Government, the Scottish Government is seeking powers to be transferred from the UK Government to create a Building Safety Levy in Scotland, the design of which will depend on the outcome of this consultation.

Propertymark response – summary

3. Propertymark welcomes the opportunity to respond to the Scottish Government's consultation on the proposed Building Safety Levy. It is positive to see that the Scottish Government is considering multiple options to fund the remediation of the estimated 6000 buildings with potentially unsafe cladding. Ultimately, Propertymark supports any action that would mean those who are responsible for installing or purchasing unsafe cladding should be responsible for paying for its replacement. We also hold the position that residents and owners of individual residential units within these buildings should not contribute to the cost of remediation, unless they were directly responsible for the unsafe cladding being installed in the first place.

¹ <https://www.propertymark.co.uk/>

4. Considering this, Propertymark disagrees that a Levy is the most effective or responsible way of funding efforts to remediate unsafe cladding. Any funding should only target developers and individuals who are responsible for having the cladding installed as any sector-wide tax risks reducing the supply of homes and enabling the developers responsible for the cladding crisis to avoid paying to rectify it. Our response to the consultation can be summarised as follows:

- **Charges should focus on who is responsible for the cladding costs** – this would ensure that no landlord or developer who did not install unsafe or flammable cladding is not penalised for the actions of others.
- **Any charge should acknowledge the current housing supply issues in Scotland** – the Scottish Government must avoid any measures that could make it more expensive to build new homes. This would lead to a reduction in the number of homes built at a time where Scotland faces significant housing supply pressures.
- **The levy should be reduced or removed once cladding is remediated** – this would incentivise remediation works to take place more quickly, leading to safer buildings for residents and a lower cost of running the Remediation Programme.

For clarification, throughout our response, we state that the Levy should be charged to the developer or landlord responsible for installing the unsafe cladding. When stating this, we are referring to the ultimate owner of the block, group or organisation who made the decision to install the unsafe cladding within the block. We understand that determining responsibility for unsafe cladding can be difficult but believe that it is necessary to determine the responsible party to ensure they cover the costs of the issue that they are responsible for.

Questions

Question 1: Do you think a new tax on housebuilding, paid by developers, is a fair way to generate revenue to fund the Scottish Government’s Cladding Remediation Programme?

5. We do not believe a new tax on housebuilding, paid by developers, is a fair way to generate revenue to fund the Scottish Government’s Cladding Remediation Programme. We believe this to be the case for two key reasons. Firstly, this penalises developers who did not install flammable

cladding in the buildings they developed. This potentially includes developers who may not even build homes that fall under the scope of Scotland's Cladding Remediation Programme, which is difficult to justify. Secondly, a sector-wide tax may impact the total number of new homes that developers build as it is an additional cost that developers would not have previously budgeted for. Considering the scale of the housing crisis in Scotland, the funding system used to pay for cladding remediation should avoid reducing the capacity of developers to build new homes.

6. Due to the above reasons, we would recommend an alternative system to raise funds for the Scottish Government's Cladding Remediation Programme. The alternative system would charge developers and landlords who are responsible for installing the unsafe cladding that is being replaced every year regardless of the number of homes they build. We also would recommend that the amount charged should be based on the number of individual homes or blocks of flats that still have unsafe cladding that needs to be replaced. This would be fairer and more effective without penalising developers who did not install the unsafe cladding for three reasons. Firstly, no developers who had no role in installing unsafe cladding would be affected. Secondly, it would not place a new tax on building new homes, which could undermine efforts to resolve Scotland's housing crisis and three the Levy can be used to incentivise developers and landlords to remediate the buildings they are responsible for quickly, reducing the time it takes to remediate Scotland's buildings and therefore lowering the costs of the Remediation Programme.

Question 2: Do you agree that homes delivered through the Scottish Government's Affordable Housing Supply Programme should be removed from the Scottish Building Safety Levy?

7. In the case that the Building Safety Levy is introduced to all developers, we agree that homes delivered through the Scottish Government's Affordable Housing Supply Programme should be removed from the Scottish Building Safety Levy. This would help to incentivise more developers to build more affordable homes. However, any developer that still has not remediated all the unsafe cladding from the buildings they developed should still have to pay into the Scottish Building Safety Levy, even if they are delivering homes through the Affordable Housing Supply Programme. This would prevent larger developers who are responsible for installing unsafe cladding from avoiding their responsibilities.

Question 3: What are your views on the principle of removing smaller developers from charge of the Scottish Building Safety Levy?

8. We agree in principle with removing smaller developers from being charged, as long as they were not responsible for installing unsafe cladding. This would help to ensure that firms which are more likely to be financially impacted by the levy or which may reduce output of homes are exempt. As with questions 1 and 2, we still agree that smaller developers who have developed buildings with unsafe cladding should not be removed until they have remediated their buildings.

Question 4: If you agree that small developers should be removed from charge under a Scottish Building Safety Levy, what are your views on the method of determining who is a smaller developer?

9. The methodology should consider the number of current development projects that a developer is working towards as well as their total capacity of the number of homes they can build every year.

Question 5: Are there any other exemptions from the Scottish Building Safety Levy that you think should be considered by the Scottish Government?

10. Yes, we believe the following three exemptions should be considered. Firstly, developers who do not build buildings that are in the scope of Scotland's remediation plans. Secondly, developers who have not installed flammable or otherwise unsafe cladding within any of their buildings. Thirdly, developers who have remediated all of their properties.

Question 6: Are there any types of development listed in the exemptions above that you think should not be exempted from the Scottish Building Safety Levy?

11. We disagree that developers should automatically be exempt from the Levy if they build wheelchair accessible homes or for developments in rural areas and on islands. Developers who continue to avoid their requirements to remediate buildings of unsafe cladding should pay the Levy until all their buildings have been remediated. Not only will this incentivise developers to remediate their buildings quickly, thus ensuring residents are safe, but it will prevent larger developers from avoiding levy payments by focusing on development projects that would be exempt from the Levy.

Question 7: Do you have any comments on exemptions not covered by the previous questions that you wish to raise?

12. We have no further comments to make at this time.

Question 8: Do you agree that rate of the Scottish Building Safety Levy should be calculated as a proportion of the market value of the property?

13. No, we disagree that the levy should be calculated as a proportion of the market value of the property. Under Propertymark's proposals to establish a levy per building with unsafe cladding, which is targeted directly at landlords and developers responsible, we would recommend that the Levy should be calculated based on the number of residents of the building. This would help to incentivise remediation where most people are affected. Under existing proposals, there is no incentive for remediation works to take place, especially in larger buildings where remediation is expected to be more expensive. By increasing the size of the Levy in line with the number of residents affected, landlords and developers will be more likely to start remediation works in buildings where more people live. Prioritising remediation works where more people live will help reduce the chance of fires that would risk more lives being lost.

Question 9: In cases where a property is not sold on the open market, what alternative valuation could be used to calculate the Scottish Building Safety Levy, to ensure proportionality with the market value of the property?

14. We disagree that the Levy should be based on the property value and therefore disregard this question.

Question 10: In relation to Question 9, Do you have any information on valuations undertaken during the building standards process that would be useful for the Scottish Government to consider?

15. We have no further comments to make at this time.

Question 11: What are your views on using one of the following alternative methods of calculation for the Scottish Building Safety Levy:

- Flat rate per unit
- Rate based on the size (per square metre) of the property
- Rate based on the number of bedrooms of the property

- **Rate based on the cost of building works of the property**

16. As mentioned in our response to question 8, our ideal method for calculating the Levy would be the total number of residents affected by the flammable cladding. We would envision this would be based on the number of bedrooms of the property, where flammable cladding remains, to acquire an approximate number of total residents as we appreciate that acquiring the actual total number of residents would be considerably time consuming and increase the cost of organising the Levy.

Question 12: Do you think there should be a different rate applied on brownfield developments?

17. We do not believe there should be a different rate applied on brownfield developments, as we do not believe new buildings should be considered for the Levy. The only way in which new buildings should be considered is if flammable cladding has been installed by the landlord or developer.

Question 13: Do you agree that liability for the Scottish Building Safety Levy should arise in relation to the issuance of acceptance of a completion certificate?

18. We disagree that liability for the Levy should arise in relation to the issuance of acceptable of a completion certificate. As stated previously, we believe the Levy should be charged to the individual or organisation responsible for installing the unsafe cladding, which would apply to existing buildings. Even where new buildings have been completed with unsafe cladding, our proposed alternative Levy system would be charged through a different mechanism.

Question 14: Do you agree that Revenue Scotland should act as the revenue authority for the Scottish Building Safety Levy?

19. We have no issues with Revenue Scotland acting as the revenue authority for the Levy. However, we would recommend that an additional body be established for determining who is responsible for installing the unsafe cladding in buildings, which would enable Revenue Scotland to charge them more effectively.

Question 15: Which of the following schedules do you think is the most appropriate for the frequency of returns:

- Per Unit
- Monthly
- Quarterly

20. We would recommend quarterly returns, in line with SLfT.

Question 16: Do you agree that, in relation to the Scottish Building Safety Levy, the tax authority should have the investigatory and enforcement powers set out in Annex B

21. We would welcome investigatory and enforcement powers set out in Annex B. This would help to improve Revenue Scotland's ability to determine if any property has unsafe cladding and who was responsible for agreeing to or installing the unsafe cladding. This would be required in order to issue the Levy against those responsible for unsafe cladding in Scottish blocks.

Question 17: Do you agree that there should be no active conditionality between the issuance of each completion certificate and payment of the Scottish Building Safety Levy?

22. As mentioned before, under our proposed ideal Levy system, this would only impact new buildings where unsafe cladding has been installed. As long as Revenue Scotland is able to use its existing enforcement powers to ensure that the Levy is paid where a newly completed building has unsafe cladding installed, we agree that there should be no active conditionality between the issuance of each completion certificate and payment of the Scottish Building Safety Levy.

Question 18: What are your views on introducing additional sanctions for taxpayers where Revenue Scotland deem there to be persistent or major non-compliance in paying the Scottish Building Safety Levy?

23. We agree that additional sanctions should be issued towards those who do not comply with paying the Levy. This will further incentivise those responsible for installing unsafe cladding to remediate quickly, or face a larger financial penalty.

Question 19: Are there specific aspects of the housebuilding industry that may require a different approach to compliance than set out above?

24. We have no further comments to make at this time.

Question 20: Do you agree with our proposals for dispute resolution in relation to the Scottish Building Safety Levy?

25. We have no issues with the Scottish Government's proposals for dispute resolution in relation to the Scottish Building Safety Levy.

Question 21: What are your views on having a sunset clause or end date for the Scottish Building Safety Levy?

26. We would recommend against a sunset clause for the Scottish Building Safety Levy. We would recommend a regular review instead.

Question 22: Do you think there should be a regular review for a Scottish Building Safety Levy?

27. Yes, for two key reasons. Firstly, having a regular review will ensure that the Levy can be used for as long as it is required, with a review enabling the Scottish Government to consider when the end to the Levy is necessary. Secondly, regularly reviewing the Levy allows for changes to be made if it isn't meeting its objectives or if changes within the sector mean that the initial scope of the Levy needs to be expanded or reduced.

Question 23: Do you have any information which could inform any final Business and Regulatory Impact Assessment (BRIA) relating to the Bill?

28. While Propertymark would welcome a separate discussion to help inform the Business and Regulatory Impact Assessment. We would also welcome an opportunity to provide feedback once the Levy is introduced, especially in terms of its impact on the number of new homes available that our members sell and if our members have seen any unexpected increase in house prices.

Question 24: Are you aware of any examples of particular current or future impacts, positive or negative, on young people, (children, pupils, and young adults up to the age of 26) of any aspect of the proposals in this consultation?

29. Yes, under the Scottish Government's current proposals to establish a Levy on the majority of new homes built, we expect this to have a negative impact on the number of homes built and that it may raise house prices. We believe because the Levy will add an additional cost on building homes, which some developers may not be able to afford. Depending on how the Levy is introduced, it could mean that developers focus on building a smaller number of homes at a higher price or they will build the same number of homes but raise prices to compensate. Typically, children, pupils and young adults will suffer the most from this as adults with young children and young adults will be less likely to afford homes. This increases their housing insecurity as a result. Additionally, a reduction in the overall supply of homes will further exacerbate housing insecurity. This is partially why Propertymark recommends against a Levy for all developers, minimising the impact on the wider sector by focusing on those who are responsible for installing flammable cladding.

Question 25: Are you aware of any examples of potential impacts, either positive or negative, that you consider any of the proposals in this consultation may have on the environment?

30. Propertymark considers this to be outside of our expertise.

Question 26: Are you aware of any examples of how the proposals in this consultation may impact, either positively or negatively, on those with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)?

31. As with our answer to question 24, populations with protected characteristics often face higher levels of housing insecurity or lower incomes. As such, the Levy as proposed for the entire housing sector will negatively impact these groups at a greater rate than others.

Question 27: Are you aware of any examples of potential impacts, either positive or negative that you consider any of the proposals in this consultation may have on groups or areas at socio-economic disadvantage (such as income, low wealth or area deprivation)?

32. Please see our response to question 24.

Question 28: Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on island communities in a way that is different from the impact on mainland areas

33. We have no further comments to make at this time.