

# Subsidy Advice Unit Report on the proposed social sector medium and high- rise buildings fire safety Scheme

Referred by the Welsh Government

8 May 2024

Subsidy Advice Unit

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Part of the Competition and Markets Authority

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# 1. Introduction

- 1.1 This report is an evaluation prepared by the Subsidy Advice Unit (SAU), part of the Competition and Markets Authority, under section 59 of the Subsidy Control Act 2022 (the Act).
- 1.2 The SAU has evaluated the Welsh Government's assessment of compliance of the proposed social sector medium and high-rise buildings fire safety grant fund, for projects valued at over £6 million (the Scheme), with the requirements of Chapters 1 and 2 of Part 2 of the Act (the Assessment).<sup>1</sup>
- 1.3 This report is based on the information provided to the SAU by the Welsh Government in its Assessment and evidence submitted relevant to that Assessment.
- 1.4 This report is provided as non-binding advice to the Welsh Government. The purpose of the SAU's report is not to make a recommendation on whether the Scheme should be implemented, or directly assess whether it complies with the subsidy control requirements. The Welsh Government is ultimately responsible for making the Scheme, based on its own assessment, having the benefit of the SAU's evaluation.
- 1.5 A summary of our observations is set out at section 2 of this report.

## The referred scheme<sup>2</sup>

- 1.6 The Assessment states that the Scheme is designed to address fire safety issues in social housing in medium and high-rise residential buildings. The Scheme will support five areas relating to fire safety:
- (a) cladding - replacement of non-compliant external wall cladding, and rectification of any external wall fire safety compartmentalisation deficiencies;
  - (b) fire detection and alarm systems - ensuring compliance with current standards, providing comprehensive coverage, and integration into the wider fire safety plan for the building(s);
  - (c) evacuation alert systems - designed to support the fire safety plan, whether this means stay put, partial or full evacuation;

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<sup>1</sup> Chapter 1 of Part 2 of the Act requires a public authority to consider the subsidy control principles and energy and environment principles before deciding to give a subsidy. The public authority must not award the subsidy unless it is of the view that it is consistent with those principles. Chapter 2 of Part 2 of the Act prohibits the giving of certain kinds of subsidies and, in relation to certain other categories of subsidy creates a number of requirements with which public authorities must comply.

<sup>2</sup> [Referral of the proposed Social Sector Medium and High-Rise Buildings Fire Safety Grant Fund – Large Awards Scheme by the Welsh Government - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/referrals/proposed-social-sector-medium-and-high-rise-buildings-fire-safety-grant-fund-large-awards-scheme)

- (d) fire suppression systems - an effective and comprehensive fire suppression system is a highly effective way to reduce the risk of death and injury from fire; and
  - (e) 'compartmentation' - each apartment is considered to be a separate premises with fire resistance and/or fire-stopping measures, ensuring that a fire which originates in a flat is contained until it can be extinguished, and before it can spread to other flats or common areas.
- 1.7 The total budget for the Scheme is £128 million and is currently intended to open to registered social landlords and local authorities across Wales from May 2024. The Scheme will support works to buildings which are:
- (a) over 11 metres high that identify, remove, replace, remediate, or introduce aspects that make improvements to buildings in relation to fire safety; and
  - (b) provide funding for projects valued at over £6 million, with the maximum award for each project capped at £20 million.
- 1.8 To access funding, applicants would be required to provide a works plan, including financial profile, and timeframe for the project. It is anticipated, at present, that the Scheme will finance fewer than ten projects.
- 1.9 The Scheme is part of a wider programme designed to address fire safety remediation issues in buildings in Wales. This also includes support to leaseholders affected by fire safety defects, specific support related to 'orphan' buildings (where the developer cannot be identified), and support to smaller developers.
- 1.10 The Welsh Government explained that the Scheme will be administered through a fund designed to remedy fire safety issues in social sector medium and high-rise buildings. To date, projects under this fund have provided grants to support works to buildings which are over 11 metres high, but where the works were mostly valued at less than £6 million (subject to a maximum allowable award of £8 million).<sup>3</sup> We understand this pre-existing scheme has, to date, committed approximately £122 million in relation to 166 projects spanning across 131 buildings. This referral and report relate to the referred Scheme, which the Welsh Government explained covers remaining projects not funded under the pre-existing scheme because they exceeded that scheme's threshold.
- 1.11 The Welsh Government has identified that a subsidy given under the referred Scheme would involve the delivery of a service of public economic interest (SPEI).

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<sup>3</sup> [Social Housing Building Safety Grant \(SC10804\)](#). We refer to SC10804 as the 'pre-existing scheme'. This pre-existing scheme is intended to run up to 31 March 2026 and the latest date for application for the most recent round was 29 March 2024. This scheme was not referred to the SAU.

## SAU referral process

- 1.12 On 19 March 2024, the Welsh Government requested a report from the SAU in relation to the Scheme.
- 1.13 The Welsh Government explained<sup>4</sup> that the Scheme is a Scheme of Particular Interest because it allows subsidies to be granted over the value of £10 million.
- 1.14 The SAU notified the Welsh Government on 25 March 2024 that it would prepare and publish a report within 30 working days (ie, on or before 8 May 2024).<sup>5</sup> The SAU published details of the referral on 25 March 2024.<sup>6</sup>

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<sup>4</sup> In the information provided under section 52(2) of the Act.

<sup>5</sup> Sections 53(1) and 53(2) of the Act.

<sup>6</sup> [Referral of the proposed Social Sector Medium and High-Rise Buildings Fire Safety Grant Fund – Large Awards Scheme by the Welsh Government - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/referral-of-the-proposed-social-sector-medium-and-high-rise-buildings-fire-safety-grant-fund-large-awards-scheme-by-the-welsh-government)

## 2. Summary of the SAU's observations

- 2.1 The Welsh Government structured its Assessment to address each of the subsidy control principles outlined in the Act (the Principles). Our evaluation follows that structure.
- 2.2 We consider the policy objective for the Scheme to be clearly articulated and rooted in plausible equity grounds, including the protection of life from fire-related harm through the remediation of affected social housing to fire safety compliance.
- 2.3 The Assessment would benefit from more precise referencing and signposting to specific evidence and analysis within supporting documents. In addition, the Welsh Government should strengthen parts of its Assessment to more closely follow the [Statutory Guidance](#) and [SAU Guidance](#) in its reasoning, and provide relevant evidence to support some of the assertions made in the Assessment. In particular, the Assessment would be improved:
- (a) In Principle B, by providing further information and evidence on how some aspects of Scheme design limit the intervention to the minimum necessary to achieve the policy objective. For example, the Assessment could be improved by providing more detail on the type of review being undertaken by the expert panel and their ability to query costs provided in the applications, or by providing more evidence on the clawback mechanism. It could also be strengthened by providing evidence to demonstrate that grant funding is the most efficient way to remediate buildings and thus, achieve the policy objective, as well as providing financial analysis to demonstrate beneficiaries' requirement for the full funding of the remediation works. Finally, the Assessment could consider other subsidies given to the same recipients for similar purposes (including under the pre-existing scheme) as part of the assessment of the proportionality of awards to individual beneficiaries, and how these have been taken into account when setting Scheme limits, in line with Statutory Guidance.
  - (b) In Principle C, by providing evidence in support of the counterfactual, such as evidence of landlords' inability to address the fire safety issues in a timely manner. For instance, the Assessment could have included specific supporting statements, or other evidence from social landlords, to demonstrate their financing constraints and the timescale under which remediation works would happen, absent a subsidy.
  - (c) In Principle E, by providing more information about the non-subsidy alternatives that were considered and the analysis that was undertaken that led to their rejection, including evidence to show that these alternatives would take longer or be more costly.

(d) In relation to the SPEI criteria, by going through each limb of the Section 29 Act requirements more systematically.

2.4 Our report is advisory only and does not directly assess whether the Scheme complies with the subsidy control requirements. The report does not constitute a recommendation on whether the Scheme should be implemented by the Welsh Government. We have not considered it necessary to provide any advice about how the proposed Scheme may be modified to ensure compliance with the subsidy control requirements.<sup>7</sup>

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<sup>7</sup> Section 59(3)(b) of the Act.



### **3. The SAU's Evaluation**

3.1 This section sets out our evaluation of the Assessment. The Welsh Government structured its Assessment to address each principle in turn, and our evaluation follows that structure.

#### **Principle A**

3.2 Under Principle A, subsidies should pursue a specific policy objective in order to:

- (a) remedy an identified market failure; or
- (b) address an equity rationale (such as local or regional disadvantage, social difficulties or distributional concerns).<sup>8</sup>

#### **Policy objectives**

3.3 The Assessment sets out that the policy objective of the Scheme is to 'provide funding to Welsh Social Sector Landlords to undertake rapid remediation of identified fire safety defects in all in scope buildings in order to protect the lives of residents.'

3.4 The Assessment further explains that 'while the primary aim is to protect lives, other outcomes focus on addressing the cause of the issue, and the restoration of affected housing stock as fit for purpose'. Furthermore, the Welsh Government envisages that the Scheme will contribute towards a healthy and more equal Wales.

3.5 In our view, the Assessment clearly sets out the policy objective and articulates the underlying reason for its policy aims.

#### **Equity objective**

3.6 The Statutory Guidance sets out that equity objectives seek to reduce unequal or unfair outcomes between different groups in society or geographic areas.<sup>9</sup>

3.7 The Assessment states that the Scheme is designed to support Welsh public sector efforts to reduce social and economic disadvantage. It explains that by ensuring that disadvantaged persons living in Wales have access to safe social housing, it will improve living safety standards for residents, and will prevent detrimental impacts on the physical and mental health of those individuals.

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<sup>8</sup> Further information about Principle A can be found in the [Statutory Guidance](#) (paragraphs 3.32 to 3.56) and the [SAU Guidance](#) (paragraphs 4.7 to 4.11).

<sup>9</sup> [Statutory Guidance](#), paragraphs 3.49-3.53.

- 3.8 Furthermore, the Assessment states that remediation works will facilitate skills development for contractors, sub-contractors, and material suppliers. It will also ‘support upskilling of small to medium Welsh enterprises and recruiting/training of additional staff’.
- 3.9 The Assessment further explains that the desired outcomes of the subsidy are:
- (a) protection of life from fire related harm;
  - (b) remediation of affected buildings to fire safety compliance;
  - (c) restoration of public and commercial confidence in the safety and viability of social sector medium and high-rise residential building housing within Wales; and
  - (d) appointment of specialist contractors that can use their expertise to increase foundational economy in this sector in Wales.
- 3.10 In our view, the Assessment provides plausible equity rationales that underpin the Scheme and provides some useful evidence of the group(s) that might benefit from the Scheme. It could be improved by being more specific on which equity objective(s) it relies upon, and then providing additional reasoning on how these equity objectives reduce disparities between different groups in society or geographic areas.

### **Market failure**

- 3.11 The Statutory Guidance sets out that market failure occurs where market forces alone do not produce an efficient outcome.<sup>10</sup>
- 3.12 The Assessment explains that properties with fire safety issues may find it difficult to secure mortgages. Additionally, building insurers have either ceased to insure these buildings, or are requiring significantly higher premiums. The Assessment states that this ‘potentially impacts the housing supply, as well as public trust in medium and high-rise dwellings as a property option.’
- 3.13 We note that, as set out in the Statutory Guidance, it is for public authorities to decide whether the scheme remedies a market failure or addresses an equity concern, or both, depending on if the policy objective straddles both efficiency and equity issues.<sup>11</sup> Having included a market failure section in the Assessment, it could be improved by more clearly identifying and setting out the market failure(s) being addressed, in line with the Statutory Guidance,<sup>12</sup> and explaining how the Scheme aims to address it. The Assessment could also be further strengthened by

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<sup>10</sup> [Statutory Guidance](#), paragraphs 3.35-3.48.

<sup>11</sup> [Statutory Guidance](#), paragraphs 3.32-3.33.

<sup>12</sup> [Statutory Guidance](#), Annex 2, paragraph 16.12.

including specific cross references, or using other signposting, to assist navigation of the evidence used to support the existence of a market failure.<sup>13</sup>

## Principle B

3.14 Principle B requires that subsidies should be proportionate to their specific policy objective and limited to what is necessary to achieve it.<sup>14</sup>

### Proportionality

3.15 The Assessment states that ‘Welsh ministers have concluded that the level of subsidy is proportionate as it will meet the minimum level necessary to address fire safety issues and ensure the buildings are in a safe condition to maintain affordable housing supply’.

3.16 The Assessment notes that without the Scheme, lives remain at an unacceptable level of risk and individuals are subject to unnecessary levels of uncertainty and stress, as well as potential hardship. The Assessment further notes that the referred Scheme is expected to relate to fewer than ten projects.

3.17 The Assessment details (in various parts of the Assessment) those elements of the Scheme which, by design, limit the intervention:

- (a) the total budget for the scheme is up to £128 million for the financial year 2024/25, based on current identified need and a 20% contingency in case of cost overrun;
- (b) the maximum subsidy awardable under the Scheme is £20 million per remediation project;
- (c) a grant has been chosen, as opposed to a loan, as other funding mechanisms are likely to add additional costs and delay, as well as reduce the rapid uptake and remediation action required;
- (d) compensation is disbursed in arrears based on actual costs, which reduces the risk of overcompensation;
- (e) applications to the Scheme are assessed for due diligence by a Welsh government technical review expert panel;

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<sup>13</sup> Evidence referenced in this section included the Hackett Review, the Grenfell Inquiries, and Welsh Government’s Building Safety Expert Group, which without specific references, did not appear relevant to the point being made.

<sup>14</sup> Further information about Principle B can be found in the [Statutory Guidance](#) (paragraphs 3.72 to 3.108) and the [SAU Guidance](#) (paragraphs 4.15 to 4.19).

(f) the funding is only for reasonable eligible capital costs and does not cover management or building operating costs; and

(g) the Welsh government can recover any over-payment.

3.18 We consider that the Assessment explains at a high level why the intervention is proportionate, including aspects such as payment in arrears, due diligence and clawback mechanisms. However, the Assessment should be improved by including further information and evidence on how these aspects limit the intervention to the minimum necessary to achieve the policy objective. In particular, the Assessment could be strengthened by providing more detail on the type of review being undertaken by the expert panel and their ability to query costs provided in the applications, or by providing evidence of a clawback mechanism.

3.19 In addition, the Assessment should provide relevant evidence to demonstrate that grant funding is the most efficient way to remediate buildings and thus, achieve the policy objective. It could provide financial analysis to demonstrate beneficiaries' requirement for the full funding for remediation works.

3.20 The Assessment could also be strengthened by providing a sense of scale. For example, the value of this Scheme relative to the value of the housing stock in the relevant market(s) would help assess proportionality.

3.21 Finally, the Assessment should consider other subsidies given to the same recipients for similar purposes (including under the pre-existing scheme) as part of the assessment of the proportionality of subsidies to individual beneficiaries, and how these have been taken into account when setting Scheme limits, in line with Statutory Guidance.<sup>15</sup>

## Principle C

3.22 Principle C requires that:

(a) first, subsidies should be required to bring about a change of economic behaviour of the beneficiary; and

(b) second, that change, in relation to a subsidy, should be conducive to achieving its specific policy objective, and something that would not happen without the subsidy.<sup>16</sup>

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<sup>15</sup> [Statutory Guidance](#), paragraphs 3.91-3.92.

<sup>16</sup> Further information about Principle C be found in the [Statutory Guidance](#) (paragraphs 3.57 to 3.71) and the [SAU Guidance](#) (paragraphs 4.12 to 4.14).

## Counterfactual assessment

- 3.23 In assessing the counterfactual, the Statutory Guidance explains that public authorities should assess any change against a baseline of what would happen in the absence of the subsidy (the ‘do nothing’ scenario’).<sup>17</sup> This baseline would not necessarily be the current ‘as is’ situation (the ‘status quo’) but what would likely happen in the future – over both the long and short term – if no subsidy were awarded.
- 3.24 Under a ‘counterfactual’ section, the Assessment explains that ‘no Wales-wide counterfactual analysis has been developed’ and that ‘the “do nothing and let social landlords address the matter as best they can” approach is immediately discounted as unfeasible.’ This is because ‘the nature of the issue has been clearly identified and the response required is rapid and timely action by the Welsh Government and relevant stakeholders.’
- 3.25 Despite the statement that no counterfactual has been developed, under an ‘evidence of change without subsidy’ section, the Assessment describes that social landlords have expressed difficulty finding budgets to address the fire safety issues in a timely manner without having a ‘severe impact’ on their operational outputs and future plans. In our view, this ‘no subsidy’ option, where remediations work would likely happen but at slower pace, is a plausible relevant counterfactual scenario that the Welsh Government could have used in its Assessment.
- 3.26 In order to develop this scenario, the Welsh Government should provide evidence in support of the counterfactual, such as evidence of landlords’ inability to address the fire safety issues in a timely manner. For example, the Assessment could have included specific supporting statements or other evidence from social landlords to demonstrate their financing constraints and the timescale under which remediation works would happen, absent a subsidy.

## Changes in economic behaviour of the beneficiary

- 3.27 The Statutory Guidance sets out that subsidies must bring about something that would not have occurred without the subsidy.<sup>18</sup> In demonstrating this, public authorities should consider the likely change or additional net benefit.
- 3.28 The Assessment describes that ‘[a]s the funding is only to remediate fire safety defects in existing in scope housing stock, ensuring there is no additional financial impact on the Registered Social Landlords finances overall, it is expected that there will be no change to the economic behaviour of the social housing sector.’

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<sup>17</sup> [Statutory Guidance](#), paragraphs 3.60-3.62.

<sup>18</sup> [Statutory Guidance](#), paragraph 3.64.

- 3.29 However, the Assessment should have explained, and evidenced, how the subsidy brings a change in economic behaviour to the expected beneficiaries and how this contributes to the stated policy objectives. In other words, it should explain how the subsidy enables beneficiaries to carry out works that would not otherwise have been carried out in the required timescale. For example, by demonstrating a viability gap that the subsidy aims to address, enabling the planning to begin or remediation works to move forward.
- 3.30 Additionally, the Welsh Government expects that there will be an overall change in the practices and standards of building developers in the future, 'following the costs of remediation work, and the increased compliance with building standards through the regulatory regime being enacted.' However, it is not clear whether this change is brought about by the subsidy or by other factors, such as, for example, better risk assessment or stronger awareness in the sector or regulatory changes.

## Principle D

- 3.31 Principle D sets out that subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy.<sup>19</sup>

### Additionality assessment

- 3.32 According to the Statutory Guidance, 'additionality' means that subsidies should not be used to finance a project or activity that the beneficiary would have undertaken in a similar form, manner, and timeframe without the subsidy.<sup>20</sup> For schemes, public authorities should also, where possible and reasonable, ensure the scheme's design can identify in advance and exclude those beneficiaries for which it can be reasonably determined would likely proceed without subsidy.<sup>21</sup>
- 3.33 The Assessment describes that 'the effect of the Scheme is to change the pace of addressing the fire safety defects as these are additional, immediate, and non-negotiable requirements imposed over and above normal operational and planned maintenance costs.'
- 3.34 The Assessment states that if social landlords were to fund the remediation works themselves, the affected social housing infrastructure may be unavailable for extended periods. It further explains that this would require providing higher-cost alternative accommodation for affected tenants, at greater cost. It also notes that living in temporary housing causes long-term disruption, with negative consequences to tenants. The Assessment, with reference to paragraph 3.64 of the Statutory Guidance, concludes that the subsidy will enable project[s] to occur

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<sup>19</sup> Further information about Principle D can be found in the [Statutory Guidance](#) (paragraphs 3.57 to 3.71) and the [SAU Guidance](#) (paragraphs 4.12 to 4.14).

<sup>20</sup> [Statutory Guidance](#), paragraphs 3.63-3.67.

<sup>21</sup> [Statutory Guidance](#), paragraph 3.66

‘at a significantly earlier point than it would have otherwise’ and that the lowering of risk to human life is a justifiable public policy benefit to using the subsidy to bring forward a project.

- 3.35 The Assessment further explains that the Scheme will only pay for the actual remediation works carried out and that these payments will be made in arrears. Moreover, it states that ‘[p]roviding a cashflow neutral outcome to their operating budgets & ensuring that the delivery of social sector housing is maintained[...] also avoids distortion of the social sector housing market through underfunding.’
- 3.36 The Assessment is supplemented by information regarding claimant eligibility criteria, specific areas/items of allowed expenditure and industry-standard cost benchmarking. It also describes how landlords are expected to pursue insurance or warranty claims, where appropriate, and outlines the powers of the Welsh Government to audit specific projects and clawback subsidies, where it is not satisfied these have been warranted or conducted cost effectively.<sup>22</sup>
- 3.37 In our view, the reference in the Assessment to potential project audits and grant clawbacks could be helpful to demonstrate additionality. However, the Assessment should have explained in more detail how these mechanisms are intended to operate and, in turn, how they help ensure that the Scheme is only used to finance an activity that would not be otherwise funded in a similar form, or timeframe. It could have also provided evidence, based on the experience from the pre-existing scheme, of the effectiveness of these mechanisms and the outcomes of these processes.

## Principle E

- 3.38 Under Principle E, subsidies should be an appropriate policy instrument for achieving their specific policy objective and that objective cannot be achieved through other, less distortive, means.<sup>23</sup> In order to comply with Principle E, public authorities should consider why the decision to give a subsidy is the most appropriate instrument for addressing the identified policy objective, and why other means are not appropriate for achieving the identified policy objective.<sup>24</sup>
- 3.39 The Assessment explains that grant funding was selected as the most appropriate way of supporting the social housing sector to deliver the remediation outcomes at scale and pace as this is the established process for funding social sector landlords and ‘the business-as-usual approach to funding the Social Housing

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<sup>22</sup> Application Guidance (dated March 2024) for the medium and high rise residential building remediation capital grant 2024-2025.

<sup>23</sup> Further information about Principle E can be found in the [Statutory Guidance](#) (paragraphs 3.32 to 3.56) and the [SAU Guidance](#) (paragraphs 4.7 to 4.11).

<sup>24</sup> [Statutory Guidance](#), paragraphs 3.53-3.56.

Sector.’ According to the Welsh Government, ‘simplicity and effectiveness of delivery underpin the chosen option.’

- 3.40 The Assessment states that non-subsidy options were discounted due to the need to act ‘at scale and pace’, and due to the additional complexity, administrative costs (administrative overheads, interest charges, etc) that would be involved with other options.
- 3.41 The Assessment adds that social housing providers have the necessary expertise and capability to undertake such remediation works, which means that they can immediately get on with the work once they have secured the funding.
- 3.42 In our view, the Assessment explains at high-level that ‘non subsidy’ options were discounted because they are less time efficient and more costly. However, it could be improved by providing more detail about these options (eg direct provision) and the analysis that was conducted that led to their rejection, including evidence to show that these alternatives were less time efficient and more costly.

## **Principle F**

- 3.43 Principle F requires that subsidies should be designed to achieve their specific policy objective while minimising any negative effects on competition or investment within the United Kingdom.<sup>25</sup>

### **Design of subsidy to minimise negative effects on competition and investment**

- 3.44 The design elements of the Scheme are not explicitly considered in this part of the Assessment. Although we note that some of the design elements that are considered under Principle B may also apply to Principle F, and they could have been considered here. In particular, the Assessment could be strengthened by providing more detail on the clawback mechanism, the expert panel and the payment of grant in arrears.
- 3.45 Under Principle B, the Assessment considers the nature of the instrument and whether loans might be an alternative to a grant. It notes that loans might introduce additional costs and delays. It also considers the nature of costs covered, and notes that funding is only for reasonable eligible capital costs and does not cover management or building operating costs (as well as providing a more detailed breakdown of costs in further evidence).
- 3.46 Under Principle F, the Assessment could be improved with a more explicit consideration of the possible distortionary impacts of the Scheme (for example

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<sup>25</sup> Further information about Principle F can be found in the [Statutory Guidance](#) (paragraphs 3.72 to 3.108) and the [SAU Guidance](#) (paragraphs 4.15 to 4.19).



impacts on other operators in a local housing market relative to counterfactual situation where the remediation works would be carried out at a slower pace), and how this form of subsidy would minimise this impact relative to other forms. This should include consideration of other possible forms of subsidy such as loans, as well as further details on the extent of the likely delay that a loan (which, if granted on favourable terms, would also be a subsidy) would cause relative to a grant.

### **Assessment of effects on competition or investment**

- 3.47 The Assessment states that any distortionary effects from the Scheme are unlikely to be discernible as it only applies to a minute proportion of the number of identified 'at risk' buildings in both the public and private sectors in the overall Welsh housing market. The Assessment also notes that none of the projects are designed to change market conditions or provide any advantage to any party. It further notes that, due to the UK wide rental housing market supply shortage, it is extremely unlikely that any private sector landlords would be disadvantaged by the Scheme as it does not change the availability of properties in the market.
- 3.48 We note the Assessment's position that the distortionary effects of this Scheme on the overall housing market in Wales are unlikely to be discernible. In our view, however, the Assessment of the impact of the Scheme on competition or investment is limited. The Assessment should be improved by identifying the markets(s) impacted and considering whether a narrower geographic area (or areas) would have been appropriate, particularly considering evidence presented elsewhere in the Assessment indicates that the Scheme is only expected to fund remediation work on fewer than ten projects.
- 3.49 In our view, the fact that this Scheme only remediates existing properties does not necessarily mean that the Scheme would have no distortionary impact on properties that do not benefit from the Scheme. For example, the Scheme may impact competitive positions in the relevant markets, particularly if some (or all) of these properties are currently not available for rental due to the issues this Scheme is designed to resolve (see paragraph 3.34). The Assessment could be strengthened by considering the size of the social housing sector, what constraint it may impose on providers of private accommodation and how any potential competition distortions arising from this Scheme might impact them in any relevant (local) markets.

### **Principle G**

- 3.50 Principle G requires that subsidies' beneficial effects (in terms of achieving their specific policy objective) should outweigh any negative effects, including in

particular negative effects on: (a) competition or investment within the United Kingdom; (b) international trade or investment.<sup>26</sup>

- 3.51 The Assessment lists a number of benefits, with the most significant one being the protection of residents' life. Other benefits listed in the Assessment include the reduction of stress and harm, restoration of the value of properties for insurance and mortgage purposes, improved building development standards, a flow of investment into a small sector of the Welsh economy through the creation of work, and an increase of skills and knowledge of fire safety remediation issues and solutions.
- 3.52 The Assessment also states that the Scheme will create minimal market distortion within the social housing sector in Wales as all agencies with in-scope buildings have equal opportunity to apply. It also explains that the Scheme will not create any change in the wider provision of housing.
- 3.53 On the potential negative effects, the Assessment references a potential impact of the Scheme relating to excess demand on the supply chains associated with remediation works which could lead to price increases, shortages, and delays across the sector. The Assessment explains that the Welsh Government has requested that beneficiaries actively work to support small enterprises within their supply chain to help expand and develop their capacity.
- 3.54 The Assessment concludes that any potential negative effects of the Scheme are significantly outweighed by the benefit of protecting residents' lives. It relies on an economic impact assessment commissioned by the Welsh Government.<sup>27</sup>
- 3.55 Whilst the Assessment lists some potential benefits and negative effects of the Scheme, and overall clearly sets out that the protection of residents' lives outweighs potential negative impacts of the Scheme, the Welsh Government could have followed the Statutory Guidance more closely when considering the positive and negative effects of the Scheme. For example, instead of limiting its analysis of positive impacts to those that relate to the stated policy objective,<sup>28</sup> the Assessment lists a number of positive effects that are unrelated to the policy objective. These should not carry any weight in the balancing exercise and should be excluded.<sup>29</sup>
- 3.56 Furthermore, as set out in relation to Principle F, the Assessment could be improved if it had conducted a more structured analysis of the impact on competition, which in turn could have been used to inform the analysis of negative impacts in Principle G. Finally, the Assessment could have provided additional

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<sup>26</sup> See [Statutory Guidance](#) (paragraphs 3.109 to 3.117) and [SAU Guidance](#) (paragraphs 4.20 to 4.22) for further detail.

<sup>27</sup> [Safer buildings in Wales: Economic Impact Assessment \(gov.wales\)](#).

<sup>28</sup> Statutory Guidance, paragraph 3.112.

<sup>29</sup> Statutory Guidance, paragraphs 3.109 to 3.114.

evidence or analysis in support of its balancing exercise, in order to demonstrate that the positive effects outweigh the negative impacts of the subsidy.<sup>30</sup>

## Other Requirements of the Act

- 3.57 This step in the evaluation relates to the requirements and prohibitions set out in Chapter 2 of Part 2 of the Act, where these are applicable.<sup>31</sup>
- 3.58 The Welsh Government has identified that a subsidy given under this Scheme would involve the delivery of a SPEI. To designate the service as a SPEI, the public authority must be satisfied that the service would not be provided, or would not be provided on the terms required, by an enterprise under normal conditions.<sup>32</sup>
- 3.59 The Assessment sets out that the ‘funding’ of a range of building safety measures to address the immediate risks to life due to fire safety defects is ‘a service provided for the benefit of the public and would not be provided on the terms required by an enterprise under normal market conditions.’ The Assessment would be improved by providing further explanation on the reasons for determining that the provision of this funding to improve social housing infrastructure constitutes a SPEI.
- 3.60 In addition, section 29 of the Act set out additional requirements which apply when giving subsidies to SPEI. These requirements and the relevant parts of the Assessment are set out below.

### **The subsidy is limited to what is necessary to deliver the SPEI services having regard to costs of delivery and reasonable profits<sup>33</sup>**

- 3.61 The Welsh Government explained that the Scheme ensures that the support given is limited to what is necessary to deliver the SPEI services, and that the projects will be kept under regular review. Elsewhere in the Assessment, the Welsh Government added details on some of the mechanisms in place to ensure that only relevant costs will be covered, including the use of a Grant review panel to assess that the proposed works are within the scope of the programme, to verify how the risk assessments were undertaken and to minimise the risk of overcompensation.
- 3.62 As set out under paragraph 3.18 in relation to Principle B, the Assessment should be improved by including further information and evidence on how aspects of the Scheme limit the intervention to the minimum necessary.

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<sup>30</sup> The impact assessment referenced in the Assessment (see footnote 27 above) relates to a wider set of policies and it is not clear how it supports the costs and benefits analysis related to the referred scheme.

<sup>31</sup> [Statutory Guidance](#), chapter 5.

<sup>32</sup> [Statutory Guidance](#), paragraph 6.4.

<sup>33</sup> Section 29(2) of the Act.

**The subsidy is given in a transparent manner, meaning that the subsidy is given in accordance with a written contract (or other legally enforceable arrangement in writing), which sets out the terms of the subsidy and contains certain prescribed information<sup>34</sup>**

3.63 The Welsh Government explained that the subsidy is given in a transparent manner, and awards will be made using the Welsh Government's awards template letter, which is designed to meet the requirements under Section 29 (4) of the Act.

3.64 In our view, the Assessment would be strengthened by describing the terms of the awards template letter that contain the information prescribed under Section 29(4) of the Act, or by providing a copy of the letter.

**Arrangements are in place to regularly review the subsidy to ensure it remains limited to the minimum amount necessary and that any excess funds can be recovered.<sup>35</sup>**

3.65 Whilst this requirement is not directly addressed in the Assessment, the Assessment mentions that the Welsh Government has the necessary mechanisms in place to recover funds if required, built into the terms and conditions of the awards template letter.

3.66 As set out under paragraph 3.18 in relation to Principle B, the Assessment could be strengthened by providing details and evidence of a clawback mechanism, as well as any review mechanisms.

**8 May 2024**

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<sup>34</sup> Section 29(3) – (5) of the Act.

<sup>35</sup> Section 29(6) of the Act.