

<b>Title:</b> Impact assessment: Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023 <b>IA No:</b> N/A <b>RPC Reference No:</b> N/A <b>Lead department or agency:</b> Department for Levelling Up, Housing and Communities <b>Other departments or agencies:</b> N/A	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 25/04/2023
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary Legislation
	<b>Contact for enquiries:</b> Building.Safety@levellingup.gov.uk
<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> Not applicable

Cost of Preferred Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
-£0.9m	-£0.4m	£0.0m	Non-Qualifying Provision

**What is the problem under consideration? Why is government action or intervention necessary?**

Since the Grenfell Tower fire, it has become clear that many 11m+ residential buildings in England have life-critical fire safety defects that must be remedied, at significant expense.

In January 2022, Government set out a new approach to tackling building safety issues, including protecting leaseholders from the expensive and unfair costs associated with making their buildings safe. One of the key principles was that the industry players that profited and continue to profit from building safety defects should pay towards fixing the problems they had created. Government expects industry to take its share of the responsibility and fix or pay to fix life-critical fire safety defects in buildings they had a role in developing or refurbishing over the past 30 years.

If any industry players did not take this responsibility seriously, it is right that government, the public and the rest of industry should have reduced confidence in their future role in the housing market.

This policy focuses on major housebuilders and other major developers of defective 11m+ residential (including mixed-use) buildings. Government has engaged intensively with developers since January 2022 to secure commitments to take responsibility, initially through a building safety remediation pledge and then through a legally binding contract. On 30 January 2023, the Government wrote to developers saying that it expects them to sign the newly published ‘developer remediation contract’ as soon as possible. Once signed, the contract requires developers to:

- Take responsibility for all necessary work to address life-critical fire-safety defects arising from design and construction of buildings 11 metres and over in height in England that they developed or refurbished over the last 30 years.
- Keep residents in those buildings informed on progress towards meeting this commitment.
- Reimburse taxpayers for funding spent on remediating those buildings.

**What are the policy objectives of the action or intervention and the intended effects?**

The objective of this intervention is to make and keep homes safe and to place the responsibility for remediation on those that are likely to have had a role in the buildings that need remediation, rather than this falling on the general taxpayer or wider industry. It sits alongside a number of other policy interventions and existing government remediation schemes.

The Responsible Actors Scheme (RAS) acts as mechanism for securing remediation of buildings or getting further refunds for remediation grant funding already spent from those that are responsible in the short-term by creating a level playing field where developers who act responsibly can be confident that they will not be undercut by competitors who choose to shirk their responsibilities.

For those eligible developers that join the scheme and continue to comply with its conditions, they are offered protection against their competitors who are not investing their time and money now to make buildings safe. For those that do not accept their responsibility, they will be placed at a commercial disadvantage. Looking ahead, especially for new entrants to the market, there will be a restored confidence in the sector because it will show there is no place for developers that are not committed to taking responsibility for remedying unsafe buildings to hide.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

There was consideration as to whether this could be delivered without regulations, for example just requesting eligible developers to enter into a self-remediation contract with the Department.

In our preferred option, we retain the important step of requiring a developer remediation contract; however, we are adding an additional layer of monitoring and enforcement through the regulations. As government was intervening to make those buildings safe and at considerable cost through government remediation schemes, it is justifiable and reasonable that we create statutory obligations for developer self-remediation. This makes it easier for the Department to monitor these commitments and more effectively secure compliance and take action against material and persistent breaches of developer's commitments and make sure that developers are meeting these. In addition, the regulations help to create a level playing field which provides added incentive to developers to sign.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** Every five years

Is this measure likely to impact on international trade and investment?	No			
Are any of these organisations in scope?	<b>Micro:</b> No	<b>Small:</b> No	<b>Medium:</b> No	<b>Large:</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b>		<b>Non-traded:</b>	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits, and impact of the leading options.*

Signed by the responsible Minister:

Lee Rowley

Date:

24/04/2023

# Summary: Analysis & Evidence

# Policy Option 1

## Description:

### FULL ECONOMIC ASSESSMENT

Price Base	PV Base	Time Period	Net Benefit (Present Value (PV)) (£m)		
2019	2020	2023-2032	Low: -118.2	High:	Best Estimate: -0.9

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High	0.2	15.3	118.2
Best Estimate	0.2	0.1	0.9

#### Description and scale of key monetised costs by 'main affected groups'

Central-Scenario:

Familiarisation (transition) costs are borne by local authorities, private building control inspectors and developers, as they read documentation, complete administrative work, and train staff: they total £218,000.

Monitoring costs are borne by LPAs, LAs and private building control inspectors, as they ensure that prohibited developers don't receive planning permission or building control sign-off: they total £671,000.

High-Cost Scenario: *Additionally:*

The costs of delay to starting-on-site and sale caused by the planning and building control prohibitions respectively are borne by developers, since they have to finance the delay period; they total £117m.

#### Other key non-monetised costs by 'main affected groups'

Central: Developers may suffer a decline in investment as investors more carefully consider the burden of remediation.

High: *Additionally:* Prohibited developers may experience cash-flow difficulties; sub-contractors will also incur losses. Homebuyers will be delayed in realising the welfare gain from their purchase; some of those who have bought from developers off-plan (but have yet to exchange) will bear minor additional delay costs.

BENEFITS (£m)	Total Transition (Constant Price)	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			

#### Description and scale of key monetised benefits by 'main affected groups'

No benefits were monetised.

#### Other key non-monetised benefits by 'main affected groups'

The RAS reduces the risk that developers will delay remediation or fail to remediate entirely. This benefits the general taxpayer and the wider industry, who would otherwise bear the cost for cladding defects through government remediation schemes and the Building Safety Levy respectively. Creating certainty and a standardised set of obligations backed up by the scheme and prohibitions is expected overall to reduce the prospect of disputes between the developers and third parties and developers and government, reducing legal and other costs associated with such disputes.

Key assumptions/sensitivities/risks	Discount
Our key assumptions and the key risks to our analysis concern the extent to which the prohibitions are used. In the central scenario we assume the prohibitions aren't used: being prohibited is costly, so it would be highly irrational for a developer to allow themselves to become prohibited. We assume in the high-cost scenario that RAS developers accounting for 10% of RAS starts/completions are prohibited once annually for three months and believe this is an upper-bound estimate. Since being prohibited is costly, we assume that prohibited developers will want to come back into the RAS as soon as possible and we assume three months to prove that to the Department and be readmitted.	3.5

**BUSINESS ASSESSMENT (Option 1)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
<b>Costs: 0.0</b>	<b>Benefits: 0.0</b>	<b>Net: 0.0</b>	N/A

## Evidence Base

### Background & Scope

1. In January 2022, Government set out its renewed approach to tackling building safety with several key principles, which were all aimed at protecting leaseholders from the expensive and unfair costs associated with making their buildings safe.
2. One of those principles was that the industry that had profited, and continue to do so, from the crisis, must pay to fix the problems it had created.
3. The expectation is that the industry should do the right thing by taking responsibility and fix or pay to fix life-critical fire safety defects in buildings they had a role in developing or refurbishing over the past 30 years.
4. For those industry players that did not take this responsibility it was only right that government, the public and the rest of industry would have little confidence in their future role in the housing market going forward if they were not going to take a lead in solving this crisis.
5. For this policy intervention, we have been focusing on major housebuilders and other major developers of defective 11m+ residential buildings. There has been ongoing engagement with developers of this type to ask them to commit to fix or pay to fix fire safety defects in buildings they had a role in developing initially through a building safety remediation pledge, and then through engagement on a legally binding contract. On 30 January 2023, the Government wrote to 50 major developers saying that it expected them to sign the newly published 'developer remediation contract' as soon as possible. Once signed the contract will require developers to:
  - Take responsibility for all necessary work to address life-critical fire-safety defects arising from design and construction of buildings 11 metres and over in height in England that they developed or refurbished over the last 30 years.
  - Keep residents in those buildings informed on progress towards meeting this commitment.
  - Reimburse taxpayers for funding spent on remediating those buildings.
6. This work is underpinned by powers to set up by regulations a Responsible Actors Scheme (RAS) through the Building Safety Act 2022. This impact assessment considers the impact of these regulations.
7. The primary legislation provides a mechanism in statute to give the Secretary of State the power to set up a scheme that will, in general terms, differentiate between those that have taken responsibility in relation to building safety and committed to fix or pay to fix buildings with fire safety defects that they had a role in developing, and those that have not. The regulations give effect to the detail of the scheme and require that eligible developers sign the remediation contract in order to be able to join the scheme. Those that do not commit, or later renege on their commitments and are removed from the Scheme will then face commercial and reputational consequences.
8. The regulations also give effect to the new statutory prohibitions that we are also considering as part of this impact assessment. For those not doing the right thing, there will be powers to block them from lawfully commencing development (including where it has planning permission, unless excepted) and receiving building control approval.

### Policy Objective

9. The objective of this policy is to make and keep homes safe and to protect existing leaseholders from paying the price of poor practice in the industry. It sits alongside other

policy interventions and existing remediation schemes that the government are making such as the Recovery Strategy Unit, Building Safety Levy, Cladding Safety Scheme, and the Building Safety Fund.

10. This policy places onus on those that likely have had a role in the buildings that need remediating, placing the responsibility on them as opposed to it falling to the entire industry. It is a mechanism to direct the costs of rectifying defects onto those that are responsible rather than these costs falling on the general taxpayer or wider industry (some of which will be small businesses).
11. It also acts as a preventative measure for the future by focusing on a set of actors that are likely to continue operating in the market for many years. By requiring them to fix previous remediation issues we are creating a measure for the future to create safer homes.
12. The scheme also creates a level playing across the sector, with companies that choose to act responsibly being offered protection from being undercut by competitors who are not investing their time and money now to make buildings safe. Any eligible companies that do not act responsibly will face prohibitions that will have commercial consequences.

### **Why must the RAS exist to ensure the remediation of existing unsafe buildings?**

13. The economic rationale for the RAS is based on the information asymmetry that exists between residential developers and homebuyers (consumers) with regards to the safety and quality of the building.
14. The homebuyer does not know or cannot know in detail about the safety and quality of a building either because the information is unavailable, or because they'd have to go to unreasonable efforts to find out. This may incentivise developers to compete on price, at the expense of quality and safety.
15. The result has been unsafe buildings built by developers and bought by homeowners. This market failure has happened, and there are many buildings which require remediation. The Government has decided that the burden of remediation ought to fall as far as possible on the developers, since they were responsible for building them unsafely in the first place.
16. In the absence of a strong market incentive to self-remedy, the Department has signed private legal contracts with (as of 21<sup>st</sup> April but note this is subject to change) 46 major developers which oblige them to remediate or pay for the costs of remediation where possible, and we will be working closely with other potentially eligible developers to encourage them to sign as soon as possible. The RAS strengthens the incentives for developers to sign and comply with the terms of the developer remediation contract, including remediating buildings with life-critical fire safety defects at pace, and gives opportunity to government to effectively monitor and secure compliance with obligations.

### **Description of options considered**

#### **Option 1 – Do Nothing**

17. We had considered whether there was a way to deliver this without regulations, for example, just requesting that developers enter into self-remediation contracts with the Department and not regulating for the additionality of a RAS.
18. In this option, developers would be approached to pledge to commit to fix or pay to fix fire safety defects in buildings they had a role in developing, with this pledge later being turned into a contract. In this option there is a voluntary statement of commitment and while some developers may have signed the contract and committed to self-remediation, there would have been reduced financial incentive for them to do so and less ability for government

effectively to monitor and enforce compliance with the programme. Without a RAS to help set a level playing field, there would be reduced likelihood of solving the ‘first mover’ and ‘collective action’ problems associated with achieving sector-wide remediation and affected parties (including leaseholders and residents) would have had reduced confidence that all developers would make and follow through on the self-remediation commitment.

## **Option 2 – RAS (Preferred Option)**

19. In our preferred option (introduce statutory RAS provisions including the planning and building control prohibitions), we add a layer of monitoring and enforcement through regulations. Having this in statute (as well as in private law contracts) provides a backstop, quasi-regulatory regime, including to deal with systemic issues. This is especially important for 11-18m buildings, which are not covered by the higher-risk buildings regime overseen by the Building Safety Regulator under the Building Safety Act 2022. As government was already intervening to make those buildings safe and at considerable cost through government remediation schemes, it is justifiable and reasonable that we create statutory obligations for developer self-remediation. This makes it easier for the Department to monitor these commitments and more easily sanction material and persistent breaches of developers’ commitments and make sure that developers are meeting these. In addition, the RAS helps to create a level playing field which provides added incentive to developers to sign and comply with the contract, on the basis that by doing so they could not be undercut by competitors who choose to shirk their responsibilities.
20. If we did not take any regulatory action to make developers fix or pay to fix fire safety defects in buildings which they had a role in developing, the cost of remediating those defects would remain but would fall on either taxpayers or the wider industry (some of which will be small businesses), through the other government remediation schemes and the Building Safety Levy respectively.
21. Before the leaseholder protection measures were placed in the Building Safety Act, those costs would also have been placed on innocent leaseholders, many of which were stuck in flats with expensive safety defects that required remediation, which were created through no fault of their own.

## **Summary and preferred option with description of implementation plan**

22. The Secretary of State has powers to set up the RAS through the primary provisions in the Building Safety Act 2022. Those provisions are regulation-making powers and the RAS will largely be set-up through secondary legislation.
23. Setting up a statutory scheme means that the department can systematically monitor and supervise developers’ compliance and provide the public and Parliament greater assurance that developers will meet their commitments. Since a monitoring function for developer performance against the contracts would have existed anyway, the monitoring function for the RAS is not costed – but the statutory basis of the scheme will provide for a more effective and trusted monitoring process.
24. The arrangements for the scheme will come into effect after the affirmative regulations have been debated and passed by Parliament. We expect formally to approach those companies that we believe are eligible for the scheme and invite them to join the RAS shortly after the regulations have passed. This will be done in accordance with a process set out in regulations, as part of which we will also assess any applications and representations made by companies about their eligibility.
25. The prohibitions will come into effect if and when an eligible entity is placed on a non-member list, on the basis that they have not met the requirements to join (such as not signing the remediation contract) or have refused to join. The prohibitions would come into force after a period allowing for correspondence between the eligible entity and the

Department, during which the entity will be allowed to apply to join or make representations about their eligibility. This means that those that are likely to be eligible will not be prohibited unfairly before due consideration of any representations they make about their eligibility and will give companies ample opportunity to join and commit to self-remediation. The prohibitions would affect both the eligible non-member and other bodies corporate which the eligible non-member controls. Potential impacts on certain third parties which have a connection to a prohibited building or development, such as contractors on-site, third party joint venture partners and purchasers of property, have been considered in how the scheme has been designed, in the context of achieving the overall policy objectives.

26. The scheme will be operated by a small casework team in the Department who will monitor compliance with the membership conditions of the Scheme, including consideration of mandatory quarterly data returns from developers who are members of the Scheme. The team will begin the enforcement process if there is a suspected breach of the conditions but will escalate this up to Secretary of State to make the final decision of removal from the Scheme if there is a serious, material breach. Members suspected of a breach will be offered opportunities to come back into compliance and to make representations before any decision to remove them from the Scheme. Where membership is revoked following serious breach of the Scheme's conditions, the prohibitions would be put into effect.
27. Ultimately, the prohibitions will be enforced by Local Planning Authorities and Local Authority Building Control teams, with Approved Inspectors and the Building Safety Regulator supporting enforcement of the Building Control Prohibition.
28. Guidance will be provided for Local Authorities and Local Planning Authorities about enforcing the regime.

## **Rationale and evidence to justify the level of analysis used in the IA (proportionality approach)**

### **Option 2 – RAS (Preferred Option)**

Costs are relative to the counterfactual, i.e., Option 1 – Do Nothing.

#### Central and High-Cost Scenarios

29. In our central scenario we assume that the Scheme prohibitions (i.e., the planning and building control prohibitions) aren't used.
30. The prohibitions are highly costly for developers: by falling out of the RAS, they are prevented from commencing development (including where they have planning permission, unless excepted development) (hereafter the "planning prohibition") and prevented from receiving building control approval (hereafter the "building control prohibition"). These prohibitions are highly disruptive: no new building can begin, and no building can receive building control approval (though it can be sold off to non-prohibited developers or the final consumer, presumably at a discount), save for a limited exception to protect off-plan buyers of homes who have already exchanged contracts when the building control prohibition comes into force.
31. Since the prohibitions are highly costly, it would be highly irrational for a developer to allow themselves to become prohibited. As such, we assume in our central scenario that developers will not become subject to prohibitions.
32. In the central scenario, costs come from familiarisation by all parties, and local authority and private building control monitoring costs.
33. In our high-cost scenario, we assume that RAS developers accounting for 10% of RAS housing starts/completions are prohibited once a year for three months. That is, 2.5% of RAS housing units due to be started annually are prohibited by the planning prohibition for three months, and 2.5% of RAS housing units due to be completed annually are prohibited



by the building control prohibition for three months. Hereafter, 'RAS units' refers to housing units started or completed by RAS developers.

34. We assume that prohibited developers stay prohibited for only three months because the prohibitions are highly costly for the developer: we believe they will want to come back on schedule as soon as possible, and so three months is an estimate of the time taken to come back into compliance in order to re-join the Scheme.
35. The costs in the high-cost scenario are those in the central scenario, and additionally those resulting from the use of the prohibitions.
36. We assume that developers fund their projects using a combination of debt and equity (so that there is an interest rate on the former, and an opportunity cost on the latter). As such, being prohibited means incurring the cost of finance for the length of the delay.

#### Relationship with Private Legal Contracts

37. This Impact Assessment (IA) only considers the impact of the RAS additional to the private law contracts already signed by the developers upon RAS implementation or shortly thereafter. The RAS may have encouraged developers to sign those contracts: they have pledged over £2bn nominally already and it is reasonable to assume that the expectation that government would follow through on its public commitment to establish the RAS may have played a part in decision-making by developers in respect of making self-remediation commitments.
38. There are two reasons why we only consider the additionality of the RAS. First, we have no way of reliably knowing or quantifying the extent to which the threat of RAS prohibitions encouraged developers to sign the contracts. Second, we are only considering the impact of the regulation from the point of the implementation: as of the 21<sup>st</sup> April, although note this is subject to change, 46 developers have signed the contract, and we will be working closely with a limited number of other potentially eligible developers to encourage them to sign as soon as possible.
39. It is possible that some developers will sign contracts after the implementation of the RAS. Again, we cannot reliably assess in advance the extent to which the existence of the RAS may lead them to do so.

#### **Monetised and non-monetised costs and benefits of each option (including administrative burden)**

##### **Analytical Preliminaries**

The appraisal period is ten years (2023-2032). The annual discount rate is 3.5% as per HMT guidance. The price base year is 2019, whilst the present value base year is 2020.

##### **Option 2 – RAS (Preferred Option)**

###### Costs

40. In our central scenario we assume the prohibitions aren't used: costs result only from familiarisation by all parties, and monitoring costs falling on local authorities and private building control inspectors.
41. In our high-cost scenario, RAS developers accounting for 10% of RAS housing starts/completions are prohibited once annually for three months.
42. We assume that prohibited developers stay so for three months: the cost of the prohibitions is high, so developers want to come back into the scheme as soon as possible, and three months is our estimate of the time taken to prove that to the Department and be readmitted.
43. Prohibition costs fall on developers, which require extra financing for the length of the delay.

## Central Scenario

### Monetised

#### Familiarisation

##### *Local Planning Authorities (LPAs), Local Authorities (LAs) and Private Building Control Inspectors*

44. LPAs, LAs and private inspectors will need to familiarise themselves with the Scheme since they may be called upon to put the two prohibitions into force.
45. We do not believe that LPAs will require any significant familiarisation resource for the planning prohibition.
46. Building control inspectors will have to ensure they do not accept notices from prohibited developers to start on site, and that they do not provide statutory sign-off to prohibited developers. Both LAs and private inspectors will have to make only minor additions to their existing processes, so that familiarisation costs will be limited. In particular, reforms are being introduced to the building control process by other legislation, for example by the new Building Regulations, so that familiarisation with the RAS will be a small part of a wider updating of inspectors.
47. There are 333 LAs in England, and we have assumed 5 hours per LA to read the relevant documents and determine how to amend their existing processes in response; we have assumed this will be done by a building control officer or manager, and from the Annual Survey of Hours and Earnings (ASHE) have used the Chartered Surveyors (Code 2454) occupation for hourly wage data.
48. There are 86 private approved inspector firms and we have assumed 5 hours each to read the relevant documents and determine how to amend their existing processes in response; from the ASHE we have used the Chartered Surveyors (Code 2454) occupation for hourly wage data.
49. We have further assumed that both LA and private inspectors will require some training on the monitoring process they will be responsible for and have assumed this will take an hour of their time. There is a total of 7,149 inspectors, split in the ratio 55:45 in employment by local authorities and private firms. From the ASHE we have used the Chartered Surveyors (Code 2454) occupation for hourly wage data.
50. The total present-value familiarisation cost for LAs is **£107,300**, and for private inspectors the cost is **£69,900**.

##### *Developers*

51. Developers will be required to familiarise themselves with the requirements of the Scheme and to understand its provisions and prohibitions; they will also have to complete some initial administrative work.
52. We assume some company board time will be required to discuss and agree to join the Scheme and read the relevant documents: we assume 5 members and 5 hours, and from the ASHE we have used the Production Managers and Directors in Construction (Code 1122) occupation for hourly wage data.
53. We have assumed 10 hours per developer to complete the initial administrative work, and we assume this will be done by an administrator: from the ASHE we have used the Records Clerks and Assistants (Code 4131) occupation for hourly wage data.
54. We assume that the costs of the application stage of RAS will be low because the application requirements on an eligible developer that has already signed the remediation contract will be minimal.
55. The total present-value familiarisation cost for developers is **£40,900**.

## Monitoring Costs: Local Planning Authorities, Local Authorities and Private Building Control Inspectors

### *Planning*

56. Prohibited developers are required to notify the Local Planning Authority in a range of circumstances, including when applying for planning permission for prohibited major development or when they acquire land with planning permission for prohibited major development. This acts as an early warning signal to the Local Planning Authority regarding enforcement and so we assume their planning enforcement officers will check a list of prohibited developers each time they receive such a notification. We estimate checking that list will take 5 minutes.
57. We assume that planning officers would receive one such notification per site. Since starts data is only in units and not sites, we had to estimate the annual number of site starts. We did this from planning data, which is in both units and sites, and obtained average units per site 2017-21, which was 19. We then divided forecast completions units (since starts and completions are approximately equal in the long run) 2023-2032 by 19 and took the average: we estimate the average number of site starts across the appraisal period will be 11,336.
58. From the ASHE we have used the Chartered Architectural Technologists, Planning Officers, and Consultants (ASHE 2452) occupation for hourly wage data. Multiplying 5 minutes by the 11,336 sites give us the number of hours required by the planning enforcement officers and then multiplying by their wage gives us the cost.
59. The present value cost of monitoring the planning prohibition is **£133,800** for LPAs.

### *Building Control*

60. Likewise, LAs and private inspectors will have to ensure they don't give building control sign-off to prohibited developers: we assume that they will spend 5 minutes checking a list of prohibited developers each time they're signing off.
61. For initial signoffs, we have assumed one per site, so 11,336 as above. For final signoffs, Adroit, our external consultants, advised we assume one sign-off per 20 housing units (sites are signed-off in phases, not as one whole). Again, completions data is only in units, not sites, so we estimate using planning data which is in both. Averaging across 2017-2021, we assume one sign-off for sites with less than 10 units, and then one per 20 units for sites with more than 10 units; we then adjust that average by the change in forecast completions across the appraisal period. Our estimated number of final signoffs is 27,741 annually.
62. From the ASHE we have used the Chartered Surveyors (Code 2454) occupation for hourly wage data. We multiply 5 minutes by total signoffs to give us the number of hours, and then by the hourly wage. Again, we split the cost 55:45 for LAs and private firms.
63. The present value cost of monitoring the building control prohibition is **£295,500** for LAs and **£241,700** for private firms.

## **High-Cost Scenario**

### **Monetised**

*All costs in the central scenario are also incurred in the high-cost scenario; those documented below are therefore additional.*

44. We assume that RAS developers accounting for 10% of RAS housing starts/completions are prohibited once annually for three months. That is, 2.5% of RAS units due to be started annually are prohibited by the planning prohibition for three months and 2.5% of RAS units due to be completed annually are prohibited by the building control prohibition for three months.

## Delay Costs

### *Developers*

64. We assume that the prohibitions are used such that RAS developers accounting for 10% of RAS starts/completions are prohibited once a year for three months.
65. The planning prohibition will stop units that have yet to start, and the building control prohibition will stop finished units being sold; units that have started can carry on being built out, since any interim building control checks can be done, just not signed-off.
66. For the planning prohibition, the relevant units are starts, whilst for the building control prohibition, the relevant units are completions. Since starts and completions are roughly equivalent in the long run, we use completions data for both, again adjusted for the forecast change in overall completions over the appraisal period.
67. In the first year, for example, 2,662 units are delayed from starting by the planning prohibition and 2,662 units are delayed from being sold by the building control prohibition.
68. For both prohibitions, a developer being removed from the RAS for 3 months implies that the average unit is delayed by 1.5 months. However, for the building control prohibition, we make a further assumption that 25% of units are delayed for a further 6 months, because we suppose that the initial delay causes their sales to 'fall through,' requiring them to be re-sold.
69. The cost of delay to the developer comes from the additional financing required for the length of the delay. We assume that the developer funds all costs through a combination of debt and equity finance – interest must be paid on the former, and the latter has an opportunity cost.
70. For units stopped by the planning prohibition, the developer has funded land acquisition and other pre-development costs; for units stopped by the building control prohibition, the developer has also funded the building costs. The estimated England-average cost of delay for the former is £40 per unit per week, and for the latter is £500 per unit per week.
71. Having the estimated number of units impacted, the length of delay, and the cost of delay, we estimate the present value cost of the prohibitions to developers as **£117,299,800**.

### **Non-Monetised**

72. In the central scenario, the development industry is required to self-remediate or be subject to the Scheme prohibitions. Whilst many major developers in the industry, on the introduction of the RAS, are already obliged by private legal contracts to self-remediate, it is possible the market hasn't fully priced that burden in yet, perhaps because it considers it with some uncertainty. The implementation of the RAS may cause the market to reassess the burden of self-remediation, or to consider it more seriously, which might result in a reduction in external investment in the industry.
73. Prohibited developers may experience severe cash-flow difficulties, since their revenue generation would likely be at the very least diminished (though they can legally sell finished sites without building control sign-off to other developers or other entities, they might not be able to do so easily or quickly). In the long run, there may also be costs associated with reputational damage.
74. Subcontractors will also have to bear the cost of delay if work that was due to begin is delayed, subject to contractual protections they may have; third-party joint ventures will also bear costs if they venture is delayed.
75. Housing is a consumer good from which the prospective homeowner derives economic welfare: the delay caused by the prohibitions delays the consumer receiving that welfare.
76. There will be particular costs to those who have bought houses "off-plan" from a developer and who are delayed in being able to move-in to their new home, though buyers of homes

who have exchanged contracts when the prohibition comes into force will benefit from an exception to the rule that building control final certificates/certificates of completion cannot be granted. Where that exception does not arise as no purchase in the building reached exchange of contracts, they will have to arrange the continuation of their current accommodation; they may have bought consumer durables to arrive in time that they'll have to find storage for; if the delay is long enough for their mortgage agreement to expire, they will have to re-arrange it.

## **Benefits**

### **Non-Monetised**

77. The benefits of the RAS come from the incentives it creates to alter developer behaviour.
78. The threat of being removed from the RAS will reduce the likelihood that developers fail to comply with the terms of the developer self-remediation contract: the threat of the prohibitions is a strong incentive to keep to the agreed remediation schedule. This reduces the risk of delays to remediation works and to the risk that those buildings are not remediated at all. It also reduces the risk that government and developers end up in legal dispute, which would be costly for one of or both parties.
79. The RAS holds developers to account for having built unsafely in the past, and so goes some way to resolving the information asymmetry between them and consumer, by signalling to developers that they will be held account for the same in future. This strengthens the incentive for developers to build safe buildings in future, reducing the risk or a similar systemic market failure in future.
80. The RAS helps to create a level playing field which provides an added incentive to developers to sign contracts.
81. These likely benefits are non-monetised because they are behavioural and challenging to model.

## **Summary Table**

### **Monetised Costs and Benefits**

<b>Category</b>	<b>Item</b>	<b>Scenario</b>	<b>Cost / Benefit (NPV)</b>
<b>Costs</b>			
Familiarisation	LAs	Central & High	£107,300
	Private Building Control Inspectors	Central & High	£69,900
	Developers	Central & High	£40,900
	<b>Familiarisation Total</b>		<b>£218,000</b>
Monitoring	LPA/LAs	Central & High	£429,300
	Private Building Control Inspectors	Central & High	£241,700
	<b>Monitoring Total</b>		<b>£671,000</b>
Delay	Developers	High	<b>£117,299,800</b>
<b>Total (Central)</b>			<b><u>£889,100</u></b>

<b>Total (High)</b>		<b><u>£118,188,900</u></b>	
<b>Benefits</b>			
None			

## **Direct costs and benefits to business calculations**

### **Direct NPV Costs to Business**

#### **Central Scenario**

##### Familiarisation:

Private Building Inspector: **£69,900**

82. Private building control inspectors must familiarise themselves with the scheme because they must avoid accepting notice to start-on-site and giving building control sign-off to prohibited developers: the cost here comes from reading the relevant documentation and training staff.

Developers: **£40,900**

83. Developers must familiarise themselves with the Scheme in order to comply and avoid prohibitions: the cost here comes both from reading the relevant documentation and completing the initial administration.

##### Monitoring Costs

Private Building Control Inspectors: **£241,700**

84. Private building control inspectors must monitor in order to avoid accepting notices to start-on-site and giving building control sign-off to prohibited developers: the cost here comes from their checking a list of prohibited developers each time they receive notification to start-on-site and go to give building control sign-off.

#### **High-Cost Scenario**

##### Delay Costs

Developers: **£117,299,800**

85. The cost of delay to developers results from the additional financing required for the length of the delay: finance is a mixture of debt and equity; interest must be paid on the former and there's an opportunity cost on the latter. For the planning prohibition, they'll have funded pre-development costs, primarily land, and for the latter they'll have also funded the cost of building.

#### **Totals**

**Central Scenario: £352,500**

**High-Cost Scenario: £117,652,300**

#### **EANDCB (Excluding Cost of Prohibitions)**

*Equivalent in our case to central-scenario EANDCB.*

**£41,000**

#### **EANDCB (Including Cost of Prohibitions)**

*Equivalent in our case to high-cost-scenario EANDCB.*

**£13,668,300**

## **Risks and assumptions**

86. The only significant assumptions we have had to make in our modelling concern the use of the prohibitions.
87. In our central case, they're not used at all: since becoming subject to the prohibitions would be highly costly for a developer, it would be irrational for a developer to allow themselves to become prohibited; therefore, we assume they will make every effort not to, including working with the Department through its monitoring of the RAS and contracts when necessary.
88. In our high-cost case, where the planning and building control prohibitions are used, we have had to make two assumptions: the number of developers prohibited (and therefore units affected) and the length of time a given developer is prohibited for.
89. There is a high degree of uncertainty concerning the first assumption: we do not believe the prohibitions will be used very much, because, as stated, it will be highly irrational for a developer to allow themselves to become prohibited. We assume RAS developers accounting for 10% of RAS housing starts/completions are prohibited once annually for three months and believe this is likely an upper-end estimate.
90. On the second assumption: again, since the cost of the prohibitions for the developer is very high, we believe they will want to come back on schedule as soon as possible and believe three months is a reasonable amount of time to show that to the Department and be readmitted.
91. We assume that some units will be being bought off-plan from the developer. There is an exception to the regulations enabling Secretary of State to protect buyers that have already exchanged contracts on their purchase at the time a developer becomes prohibited, in that the developer will be able to receive building control sign-offs necessary for the sale to proceed.
92. We assume that some other pre-exchange sales may fall through due to the initial delay caused by the building control prohibition, perhaps because buyers are put off by the reputational impact of the prohibitions, or because they can't tolerate the delay. As such, we assume that 25% of the units prohibited by the building control prohibition will be subject to a further 6-month delay in their ultimate sale, in addition to the initial 3-month delay.
93. In the high-cost scenario, we do not differentiate between different ownership structures for the developer, or which prohibited entity the developer controls is doing the development. It is possible some of the quantified costs could fall on joint venture partners in relevant circumstances.

## **Impact on small and micro businesses**

94. There are no direct costs to micro or small business, since only large developers are in scope of the regulation, but there are indirect costs.
95. Significant costs are only incurred in the high-cost scenario, and they fall on large developers with profits in excess of £10m.
96. However, building subcontractors will also be affected in the high-cost scenario when the prohibitions are used, because building work that was due to begin will be delayed; subcontractors are more likely to be small firms.
97. This is not a fixed cost, so not disproportionate since it's reasonable to assume that the subcontractor will have done work and be owed payment proportionately to their size. It is not incurred in our central scenario and is unavoidable in our high-cost scenario.
98. Further, we have monetised costs to private building inspectors, and some of these are likely to be small businesses (there are an average of 37 inspectors employed by each firm). The cost to the sector is low, coming from familiarisation and monitoring costs,

equivalent to a £3,600 present value cost per firm over the appraisal period. This is a fixed cost, and so disproportionately affects small businesses, but there is no way of avoiding it, and the associated costs are low.

### **Wider impacts (consider the impacts of your proposals)**

99. The policy will bolster confidence in both private and public institutions: if the costs of remediation had fallen only on taxpayers in general or the wider industry (some of which will be small businesses), this might have been considered an injustice, and trust in the housebuilding and housing market might have fallen; further, had government proven incapable of implementing a fairer approach to apportioning cost, trust in government might have fallen.
100. The policy provides a framework and certainty for developers and the public on expectations where developers undertake self-remediation.

### **Monitoring and Evaluation**

101. The monitoring and evaluation for the RAS will be carried out by a team that would already be monitoring and evaluating the private law contracts; since the RAS will not meaningfully add to their workload, their time has not been costed.
102. The RAS will be initially operated by a casework team that will sit in the Department. Their focus will be on monitoring compliance with the membership conditions of the Scheme, assessing quarterly data returns (a stipulated requirement of the developer self-remediation contract) and acting as the main point of contact for members and potential members. If they identify suspected breaches of any stipulated conditions and these cannot be rectified swiftly, they will be responsible for commencing the enforcement process. In the event of a serious, material breach of the conditions set out in the Scheme, the team will escalate this to the Secretary of State for a final decision on whether the member should be removed from the Scheme.
103. A quarterly board will oversee the RAS and make sure that the Scheme is meeting its objectives.
104. The Department is committed to report on progress to Parliament, and the Scheme can be turned off by regulations if and when it is no longer needed, i.e., there has been 100% completion of all members' required remediation to a safe and high-quality. The RAS is anticipated to be a 10-year programme of work and will additionally present a means by which to capture systemic factors affecting the pace at which remediation can be carried out. The regulations contain a statutory review clause requiring a review of the regulatory provisions within five years.