

# BUILDING SAFETY BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Building Safety Bill as introduced in the House of Commons on 5 July 2021 (Bill 139).

- These Explanatory Notes have been prepared by the Ministry of Housing, Communities and Local Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The Building Safety Bill takes forward the Government's commitment to fundamental reform of the building safety system. The Bill gives effect to policies set out in the Building a Safer Future consultation response, published in April 2020. This detailed how the Government intends to deliver the principles and recommendations of Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety, published in May 2018.
- 2 The Bill also acts as the vehicle for wider improvements including changes to the Architects Act, the Housing Act 1996, and provisions to establish a National Regulator for Construction Products and a New Homes Ombudsman. And it takes forward further changes to the Regulatory Reform (Fire Safety) Order 2005 (the Fire Safety Order or FSO), building on the Fire Safety Act 2021.
- 3 The objectives of the Bill are to learn the lessons from the Grenfell Tower fire and to remedy the systemic issues identified by Dame Judith Hackitt by strengthening the whole regulatory system for building safety.
- 4 This will be achieved by ensuring there is greater accountability and responsibility for fire and structural safety issues throughout the lifecycle of buildings in scope of the new regulatory regime for building safety. This involves:
  - establishing a new Building Safety Regulator in England to oversee a new, more stringent regime for higher-risk buildings and drive improvements in building safety and performance standards in all buildings;
  - ensuring residents have a stronger voice in the system, and establishing additional protections for leaseholders in relation to financing remediation works;
  - increasing access to redress through the Defective Premises Act 1972;
  - driving industry culture change and incentivising compliance;
  - strengthening the Fire Safety Order; and
  - providing a stronger and clearer framework for national oversight of construction products.
- 5 Part 1 provides an overview of the Bill. The Bill contains six parts and nine schedules addressing a range of issues relating to building safety and standards. The Bill makes a number of changes to existing legislation, most notably the Building Act 1984.
- 6 Part 2 establishes a new Building Safety Regulator within the Health and Safety Executive.
- 7 Part 3 deals with amendments to the Building Act 1984 as it applies to England and Wales, and defines the scope and provisions for the regime during the design and construction phase for higher-risk buildings. It also provides for the registration of building inspectors and building control approvers to better regulate and improve competence levels in the building control sector.
- 8 Part 4 is concerned with higher-risk residential buildings in England when they are occupied, and defines the scope of the regime for higher-risk buildings in occupation. It defines and places duties on the Accountable Person (the dutyholder in occupation) in relation to building safety risks in their building.
- 9 Part 5 details other provisions, including provisions relating to service charges and redress, and

changes to the Fire Safety Order. It includes provisions to require a New Homes Ombudsman scheme to be established, and powers to make provision for regulation of construction products for the UK. It allows disciplinary orders made against architects by the Professional Conduct Committee of the Architects Registration Board to be listed alongside an architect's entry in the Register of Architects. It also removes the 'democratic filter' which requires social housing residents wishing to escalate a complaint to the Housing Ombudsman to do this via a 'designated person' or wait eight weeks.

- 10 Part 6 contains the technical clauses related to the Bill, including Crown application and provision for liability of officers.

## Policy background

- 11 On 14 June 2017, a fire broke out at Grenfell Tower, a 24-storey residential tower block in West Kensington, London. Starting on the Tower's fourth floor, the fire quickly spread throughout the building and took 24 hours for firefighters to bring under control. 71 fatalities were confirmed by the coroner – and a further former resident passed away in January 2018.
- 12 Following the fire, the Government commissioned the Independent Review of Building Regulations and Fire Safety, led by Dame Judith Hackitt. Dame Judith's final report, *Building a Safer Future*, was published on 17 May 2018. The Independent Review found that the system for ensuring fire and structural safety for high-rise residential buildings is not fit for purpose. The Independent Review made 53 recommendations, calling on the Government to:
- create a more effective regulatory and accountability framework to provide greater oversight of the building industry;
  - introduce clearer standards and guidance;
  - put residents at the heart of a new system of building safety regulation, empowering them with more information, engaging them on how risks are managed in their building and ensuring effective routes for raising and escalating safety concerns; and
  - help to create a culture change and a more responsible building industry from design, through to construction, management and refurbishment.
- 13 The Government accepted all the findings and recommendations of the Independent Review.
- 14 Proposals for a new system for ensuring fire and structural safety in buildings were outlined in the consultation *Building a Safer Future: Proposals for Reform of the Building Safety Regulatory System*, published on 6 June 2019.
- 15 The Government's response to the consultation was published on 2 April 2020 and a draft version of the Bill was published for pre-legislative scrutiny on 20 July 2020. The HCLG Committee reported on 24 November 2020 and Government responded on 26 May 2021.
- 16 The Welsh Government has asked the UK Government to make a number of changes to the Building Act 1984 on their behalf. These will allow the Welsh Government to use the Building Act to implement a regime for design and construction that is appropriate for Wales, while bringing forward primary legislation through Senedd Cymru in relation to wider proposals, particularly those relating to the occupation phase. The Welsh Government has published a white paper, 'Safer buildings in Wales', which sets out proposals for comprehensive reform of legislation that

contributes to building safety in Wales, including how this Bill is intended to apply to Wales.

- 17 The Welsh Government has provided further detail on their intentions in relation to individual clauses, where relevant, in the ‘commentary on provisions’ section. The intention is that the regulation and oversight of the design, construction and refurbishment of higher-risk buildings and the building control system in Wales will be addressed through the extension of local authority and Welsh Minister functions. For example, the building control authority for higher-risk buildings will be a local authority, and Welsh Ministers or their delegated body will be responsible for the registration and regulation of registered building control inspectors and registered building control approvers in Wales.
- 18 Alongside the new building safety regime, this Bill will amend provisions within the Fire Safety Order which applies to all non-domestic premises in England and Wales. As part of the Government’s response to the Independent Review, the Home Office issued a Call for Evidence on the Fire Safety Order in 2019, which informed the legislative proposals outlined in the Fire Safety Consultation in 2020 to strengthen the Fire Safety Order and implement recommendations from the Grenfell Tower Inquiry Phase 1 report requiring changes in the law. The Government’s response to the consultation was published on 17 March 2021.
- 19 The amendments to the Fire Safety Order build on the Fire Safety Act 2021, which clarifies that the FSO applies to the structure, external walls and flat entrance doors in buildings containing two or more sets of domestic premises. The amendments will require that all Responsible Persons (RPs) must record their fire risk assessments; must not appoint a person to assist them with undertaking a fire risk assessment unless that person is competent; must provide specific, comprehensible and relevant information about fire safety matters to residents of buildings containing two or more sets of domestic premises, and must keep records of this information; must take such steps as are reasonably practicable to identify other RPs in the same premises, inform each other of their name and United Kingdom address and of the parts of the premises for which they consider themselves to be an RP and to record that information; that a departing RP must provide specific fire safety information to incoming RPs; and, for higher-risk buildings including a domestic dwelling, must identify and co-operate with Accountable Persons (as defined in the Building Safety Bill) in the same premises. In addition, the Bill will increase financial penalties for three specific criminal offences under the FSO and will expressly provide that compliance or non-compliance with guidance issued in accordance with Article 50 of the FSO may be relied upon by the Court as supporting compliance with or breach of the Order. The Welsh Government have expressed their support for these amendments where relevant to extend to Wales, subject to consent of Senedd Cymru.
- 20 The following provides an overview of the proposals within the Bill. This explanation is not organised in the same way as the provisions in the Bill itself (see the ‘Overview of the Bill’ section for a summary of provisions as they are ordered in the Bill). Detailed, clause-by-clause explanations of all of the Bill’s measures are provided in the ‘commentary on provisions’ section.

## **The Building Safety Regulator**

### **Functions of the Building Safety Regulator**

- 21 The Bill establishes the Health and Safety Executive as the Building Safety Regulator, to underpin the key regulatory reforms in the new building safety regime.
- 22 The Building Safety Regulator will have two objectives focused on securing the safety of people in and around buildings, and improving building standards. It will also regulate in line with best

practice principles including being proportionate, transparent, and targeting its activity at cases where action is needed.

23 The Building Safety Regulator has three core functions. These are:

- Implementing the new, more stringent regulatory regime for higher-risk buildings. This means being the building control authority in England in respect of building work on higher-risk buildings and overseeing and enforcing the new regime in occupation for higher-risk buildings. The Building Safety Regulator will work closely with, and take advice from, other regulators and relevant experts in making key decisions throughout the lifecycle of a building. It will have powers necessary to bring together teams including Fire and Rescue Services, and local authority expertise (notably Local Authority Building Control teams) to assist it in making regulatory decisions.
- Overseeing the safety and performance of all buildings. This has two key aspects:
  - Overseeing the performance of the building control sector. This will involve developing key performance indicators (KPIs) related to building control work, data collection and powers to impose sanctions for poor performance.
  - Understanding and advising on existing and emerging building standards and safety risks including advising on changes to regulations, changes to the scope of the regime and commissioning advice on risks in and standards of buildings.
- Assisting and encouraging competence among the built environment industry and registered building inspectors. This has two key workstreams:
  - Assisting and encouraging improvement in competence of the built environment sector through several functions, including establishing and setting strategic direction of the proposed industry-led competence committee, carrying out research and analysis and publishing non-statutory advice and guidance.
  - Establishing a unified building control profession with competence requirements for registration as a building control professional that will be common across both public sector (local authorities) and private sector (registered building control approvers, currently known as Approved Inspectors).

24 As the regulator leading delivery of the more stringent regulatory regime, the Building Safety Regulator will be responsible for all regulatory decisions under the new regime during the design, construction, occupation and refurbishment of higher-risk buildings.

25 The Building Safety Regulator will work closely with, and take advice from, other regulators and relevant experts in making key decisions throughout the lifecycle of a building. It will have the powers necessary to bring together teams including Fire and Rescue Services and local authority expertise (notably Local Authority Building Control teams) to assist in making major regulatory decisions.

## Committees

26 To assist in carrying out its functions, the Bill provides the Building Safety Regulator with the power to establish and maintain committees to advise on building functions. The Bill also provides the Building Safety Regulator with a duty to establish and maintain three specific committees. These are:

- **Building Advisory Committee.** Replacing the Building Regulations Advisory Committee for England (BRAC), this committee will give advice and information to the Building Safety Regulator about matters connected with most of its building functions.
- **Committee on industry competence.** This is concerned with the competence of those in the built environment industry. The committee will advise both the Building Safety Regulator and those in the built environment industry about industry competence, and provide oversight of competence generally and sector-specific competence frameworks.
- **Residents' panel.** This committee will consist of higher-risk building residents and other relevant persons (if any) that the Building Safety Regulator considers appropriate. The Building Safety Regulator will consult this committee on certain matters which it is expected would be of particular interest and importance for residents of higher-risk buildings.

## A more stringent regime for higher-risk buildings

27 One of the Building Safety Regulator's three functions is to implement a more stringent regime for higher-risk buildings.

28 The Building Safety Regulator will be responsible for all regulatory decisions under the new regime during the design, construction, occupation and refurbishment of higher-risk buildings in England.

29 The Bill gives the Secretary of State the power to amend the definition of a higher-risk building and the definition of building safety risks through affirmative regulations in light of research or on the basis of independent evidence and advice from the Building Safety Regulator.

## Higher-risk buildings in design and construction

### Dutyholders

30 The Bill allows for a new dutyholder regime to be incorporated across the lifecycle of higher-risk buildings. This is based on the principle that the person or entity that creates a building safety risk should, as far as possible, be responsible for managing that risk.

31 Many aspects of the regime, as described below, will be taken forward through secondary legislation. The description here is intended to provide an overall explanation of how the Government intends to use the powers in this Bill in England.

32 When buildings are designed, constructed or refurbished, those involved in the commissioning, design, construction or refurbishment process will have formal responsibilities for compliance with building regulations. These provisions will apply to all work to which building regulations apply, and these dutyholders will include those appointed under the Construction (Design and

Management) Regulations 2015 (CDM 2015). The main dutyholder roles under CDM 2015 are:

- **Client** - Any person or organisation for whom a construction project is carried out, including as part of their business.
- **Principal Designer** - Appointed by the Client under CDM 2015, when there is more than one contractor working on the building project. Role is to plan, manage, monitor and coordinate the pre-construction phase, when most design work is carried out. The Principal Designer is in control of the pre-construction phase.
- **Principal Contractor** - Appointed by the Client under CDM 2015, when there is more than one contractor working on the building project. Role is to plan, manage, monitor and co-ordinate the construction phase. The Principal Contractor is in control of the construction phase.
- **Designer** - Carries on a trade, business or other undertaking in connection with which they prepare or modify a design or instruct any person under their control to prepare or modify a design
- **Contractor** - Manages or controls construction work (e.g. building, altering, maintaining or demolishing a building or structure). Anyone who manages this work or directly employs or engages construction workers is a contractor.

33 Dutyholder roles may be fulfilled by either an individual or an organisation/legal entity. A dutyholder can hold more than one role in a building project. The Principal Designer will be a designer and will therefore also have designer duties; and the Principal Contractor will also be a contractor and will therefore also have contractor duties.

34 The Bill also confers power to introduce general duties in relation to planning and managing work to which building regulations are applicable, to ensure compliance with the requirements of building regulations. This is to ensure that dutyholders engage with the requirements and the safety and performance outcomes they are trying to secure, and do not view building regulations as a tick-box exercise.

## Industry competence

35 The Bill provides powers to impose competence requirements on the Principal Designer and Principal Contractor, and other persons, and to impose duties on persons making appointments in relation to building regulations to ensure that those they appoint meet the competence requirements. This is to ensure everyone doing design or building work is competent to carry out that work in line with building regulations. Statutory guidance, in the form of an Approved Document, will be provided to support these requirements.

36 For higher-risk buildings, the Bill provides powers to prescribe documents to be supplied with building control applications, which the Government proposes to use to require a signed declaration from the Client that they have assessed and are content with the competence of the Principal Designer and Principal Contractor.

## Gateways

37 The amendments to the Building Act 1984 in this Bill, coupled with existing powers both in the Building Act 1984 and in other legislation, will allow for the creation of a new Gateway regime.

This will ensure that building safety risks are considered at each stage of a new higher-risk building's design and construction.

- 38 The new Building Safety Regulator will oversee the building work and ensure appropriate measures are being implemented to manage compliance. Building work carried out in existing higher-risk buildings will also be overseen by the new Building Safety Regulator. This will either involve building control applications with plans and prescribed documents proportionate to the proposed refurbishment being submitted to the Building Safety Regulator, or by work being carried out under the Competent Person Scheme and being notified to the Building Safety Regulator. This is however separate to the Gateways process.
- 39 Gateways policy will be implemented through statutory instruments in England, which will set out the practical details of the Gateways approach. The essentials of each Gateway are detailed below.

### **Planning Gateway one**

40 Planning Gateway one will introduce a number of new requirements (referred to as planning Gateway one) in the planning system by making amendments to the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). This will ensure fire safety matters as they relate to land use planning are incorporated at the planning stage for schemes involving a high-rise residential building. This description is provided here for information purposes only; this Bill contains no provisions in relation to this stage.

41 Planning Gateway one will:

- involve the Health and Safety Executive (HSE) becoming a statutory consultee before permission is granted for development which involves or is likely to involve a high-rise residential building in certain circumstances;
- require relevant applications for planning permission to include a fire statement (on a form published by the Secretary of State, or one to substantially the same effect) to ensure applicants have considered fire safety issues as they relate to land use planning matters (for instance layout and access); and
- help inform effective decision-making by local planning authorities (or the Secretary of State as the case may be) so that those decisions and the actions that flow from them properly reflect and respond to the needs of the local community.

### **Gateway two**

- 42 Gateway two occurs prior to construction work beginning on a higher-risk building. It replaces the current building control 'deposit of plans' stage; at this stage an application will need to be provided to the Building Safety Regulator with their full design intention.
- 43 Gateway two provides a 'hard stop' where construction cannot begin until the Building Safety Regulator is satisfied that the dutyholder's design meets the functional requirements of the building regulations and does not contain any unrealistic safety management expectations.
- 44 Dutyholders will be required to submit key information to the Building Safety Regulator as part of the building control application, to demonstrate how their proposals will comply with the requirements of building regulations. Design decisions in relation to fire and structural safety must be well considered and justified, to ensure they will work effectively for the building in use.

### **Gateway three**

- 45 Gateway three is equivalent to the current completion/final certificate phase, where building work on a higher-risk building has finished and the Building Safety Regulator assesses whether the work has been carried out in accordance with the building regulations.
- 46 At this point all golden thread documents and information must be handed over to the new building owner. Dutyholders will be required to submit to the Building Safety Regulator a building control application with prescribed documents and information on the final, as-built building.
- 47 Gateway three is a 'hard stop' where the Building Safety Regulator will assess the application against applicable requirements of the building regulations, undertake final inspections of the completed building work, and issue a completion certificate on approval. Only once Gateway three has been passed can the new building be registered with the Building Safety Regulator. The registration process is distinct to the Gateway three process, and both processes must be completed before occupation of the building is allowed to commence. This increased regulatory oversight is to ensure that no building, or part of a building, is occupied before it is safe, and that building owners have the information they need to manage building safety during occupation.

### **Golden thread**

- 48 The Bill includes provisions to require the creation and maintenance of a golden thread of information. The intention is to ensure that the right people have the right information at the right time to ensure buildings are safe, and building safety risks are managed throughout the building's lifecycle.
- 49 This information will ensure that the original design intent and any subsequent changes to the building are captured, preserved and used to support safety improvements.
- 50 For new builds, the dutyholders must start to collect this information during the design and construction process. Once construction is complete, the information must be handed over to the new building owner. This information will be managed by the Accountable Person during occupation.

### **Occurrence reporting**

- 51 Provisions are included in the Bill that require mandatory occurrence reporting (MOR) to be undertaken for higher-risk buildings. All structural and fire safety occurrences which could cause a significant risk to life safety will need to be reported to the Building Safety Regulator.
- 52 Dutyholders in design and construction will be required to establish a framework and process for reporting mandatory occurrences, which must include enabling workers on-site to report mandatory occurrences. Dutyholders will also be required to report such mandatory occurrences to the Building Safety Regulator.
- 53 In occupation, the Accountable Person will be required to set up a framework and process to capture and report mandatory occurrences to the Building Safety Regulator. Where a building has multiple Accountable Persons and a Principal Accountable Person (see paragraph 55) the Principal Accountable Person will be required to establish and oversee a single mandatory occurrence reporting framework and process for the whole building. Each Accountable Person will be responsible for ensuring compliance with MOR in the area for which they have responsibility, and each Accountable Person will have a responsibility to coordinate with the Principal Accountable Person, who will have a lead responsibility in ensuring that the whole building is under an effective mandatory occurrence reporting framework and process.

54 The Bill also includes measures which will require the Building Safety Regulator to publish aggregated information it has received from dutyholders as part of the mandatory occurrence reporting regime on an annual basis, and a clause requiring the Building Safety Regulator to make arrangements for a person to establish and operate a system for the voluntary reporting of information about building safety.

## Higher-risk buildings in occupation

### The Accountable Person and Building Assessment Certificate

55 The Accountable Person is the dutyholder during occupation. They may be an individual, partnership or corporate body and there may be more than one Accountable Person for a building.

56 Where there are multiple Accountable Persons in a building, one of them will be identified as the lead Accountable Person, known as the Principal Accountable Person. There will be a duty on Accountable and Responsible Persons in a building to cooperate with each other and with the Principal Accountable Person, as this is crucial to the success of the regime. It will therefore be backed up by enforcement and sanctions, so that it becomes an offence not to cooperate. Where reference is made to the duties of an 'Accountable Person', this should be taken to also mean duties to be either discharged and/or coordinated by a Principal Accountable Person in circumstances where there are multiple Accountable Persons in a building.

57 The Bill places a duty on the Accountable Person to register any building that is in scope of the new regime with the Building Safety Regulator before it becomes occupied. Existing occupied buildings will have to be registered within a fixed transition period following the new regime coming into force.

58 The Bill places a duty on the Accountable Person to apply to the Building Safety Regulator for a Building Assessment Certificate. The Building Safety Regulator will issue a Building Assessment Certificate if it is satisfied that the Accountable Person is complying with the statutory obligations placed on them. The Accountable Person is required to display the most recent issue of the certificate in a prominent position in the building.

### Building Safety Manager

59 The Accountable Person will be required to appoint a Building Safety Manager. An exception to this obligation is where an Accountable Person has the organisational capability to deliver the role in-house (or requisite competence if it is an individual) and has confirmed this to the Building Safety Regulator.

60 The Accountable Person will need to ensure that the Building Safety Manager has the necessary skills, knowledge, experience and behaviours if they are an individual, and organisational capability where they are not, to carry out the functions assigned. The satisfactory appointment of a Building Safety Manager will be considered by the Building Safety Regulator as part of the certification process for the Building Assessment Certificate.

61 The Building Safety Manager can be an individual or organisation whose principal role is to support the Accountable Person in complying with their obligations under Part 4 of the Bill. Where an organisation is appointed, a nominated individual with the competence to oversee the overall delivery of the role must be named.

### Duty to manage risks and safety cases

62 The Bill creates an ongoing duty on the Accountable Person to assess the building safety risks

relating to their building, to take all reasonable steps to prevent a building safety risk materialising, and to limit the severity of any incident resulting from such a risk. Building Safety risks are defined in the Bill as risks to the safety of persons in or about buildings resulting from the occurrence of fire spread, structural failure and any other risk that may be prescribed by regulations in the future.

- 63 The Accountable Person will need to demonstrate how they are meeting this ongoing duty via their safety case and Safety Case Report, which they will be required to keep up to date. The safety case comprises the full body of evidence relating to the assessments and ongoing management of building safety risks.
- 64 The Accountable Person will be required to submit the building's Safety Case Report to the Building Safety Regulator as part of the process for issuing a Building Assessment Certificate or on request from the Building Safety Regulator. The report should summarise all the key components of the wider safety case, providing a justification for the safety measures in place. It will include references to supporting documentation and safety information, including all the evidence that supports how these building safety risks are being assessed and managed, contained within the golden thread of information. A key part of the report will be the overview of the Accountable Person's safety management system (SMS), which explains the policies, procedures and processes they have in place across the organisation to deliver continuous management of building safety risks.
- 65 The Safety Case Report should set out the building safety risks in the building and how these are being managed on an on-going basis, to ensure resident safety.
- 66 The Bill also includes that the Accountable Person must review the risk assessments on which their arrangements for managing building safety risks and Safety Case Report are based, and revise the report if they consider the report is no longer valid or they are requested to do so by the Building Safety Regulator. Where a Safety Case Report is revised, the Building Safety Regulator must be notified. In addition to assessing the Safety Case Report as part of the Building Assessment Certificate process, the Building Safety Regulator may request the submission of a Report where necessary, for example following a notification of a revision.
- 67 On assessment, if the Building Safety Regulator is of the opinion that the Safety Case Report does not demonstrate that the ongoing duty is met, they will enter into a dialogue with the Accountable Person on what further measures are needed in their risk management and safety arrangements and should be evidenced within the Safety Case Report.
- 68 Where agreement cannot be reached, the Building Safety Regulator will be able to issue a compliance notice, setting out specific areas of concern and, where appropriate, actions the Accountable Person must take in order to ensure the duty is met. Continued failure to comply with the notice means there is continued breach of the statutory obligation and criminal and/or Special Measures proceedings may ensue.

## **Residents and Redress**

- 69 The Bill places statutory obligations on the Accountable Person that will help to promote a strong partnership with residents. These obligations cover engagement and participation, complaints handling, information provision and the role of residents in helping to keep the building safe.
- 70 The Accountable Person will have an obligation to produce and keep up to date a Residents' Engagement Strategy setting out how they will create inclusive opportunities for residents to participate in decision-making about their building.

- 71 The Accountable Person will be required to put in place an internal complaints process for safety complaints, and residents will be able to escalate safety concerns where there is a risk to building safety to the Building Safety Regulator. There will also be a duty to cooperate between the Building Safety Regulator and other regulators, ombudsmen and redress schemes to support effective complaints handling.
- 72 Alongside this, residents will have a clear legal obligation to comply with a request made by the Accountable Person for information reasonably required for the purpose of fulfilling their duty to either assess or manage building safety risks. They will be required not to act in a way that creates a significant risk of a building safety risk materialising, nor to interfere with a relevant safety item.
- 73 The Bill also seeks to make changes to the way the Defective Premises Act 1972 operates. That Act enables a person with a legal or equitable interest in a dwelling to sue a person (including a corporate body) who carried out work to ‘provide’ that dwelling, i.e. built it from new or converted it from another type of building. The Bill seeks to amend the 1972 Act and the Limitation Act 1980 to extend the period within which legal action may be brought from six years to fifteen. That extended limitation period will apply both prospectively and retrospectively. The extended limitation period will also apply (prospectively only) to action under section 38 of the Building Act 1984 when it is brought into force. The Bill also creates a new duty on those who do any work on a building which contains a dwelling to ensure that the work does not render the dwelling unfit for habitation. The duty will apply only to those who are doing work on a building in the course of business.

## **Enforcement and sanctions**

- 74 The Building Safety Regulator will have the power to ensure compliance with the measures outlined in the Bill through a combination of toughened existing powers and new powers.

### **Toughened existing powers**

- 75 The Bill seeks to extend time limits in sections 35 and 36 of the Building Act 1984 to apply formal enforcement powers in relation to non-compliance with building regulations. This will extend the time limit from one year to ten years for section 36 notices, which require correction of non-compliant work; the Bill makes the section 35 offence triable either way (i.e. in either the Crown court or a magistrates’ court), which removes altogether the time limit for bringing prosecutions for that offence.

### **New powers**

- 76 The Building Safety Regulator will have powers to prosecute all offences in Parts 2 and 4 of the Bill (including Schedule 2), and the Building Act 1984. In addition, for all offences in the Building Act 1984 and Parts 2 and 4, where an offence is committed by a corporate body with the consent or connivance of a director, manager etc of that corporate body, or is attributable to their neglect, that person will be liable to be prosecuted as well as the corporate body.
- 77 The Building Safety Regulator will be able to issue compliance notices (requiring issues of non-compliance to be rectified by a set date) and, in design and construction, stop notices (requiring work to be halted until serious non-compliance is addressed).
- 78 Failure to comply with compliance and stop notices will be a criminal offence, with a maximum penalty of up to two years in prison and an unlimited fine.
- 79 The Bill includes powers of entry to gather evidence for compliance action. A warrant from a magistrates’ court will be required for premises used wholly or mainly as a private dwelling, or

where force needs to be used to enter any premises.

- 80 The Building Safety Regulator will also hold to account local authorities, registered building control approvers and registered building inspectors, for example where they have not registered or are performing below the set standard, and will be able to suspend or remove inspectors from the register and to prosecute where necessary.
- 81 The Bill also includes powers for the Building Safety Regulator to apply to the First-tier Tribunal for an order appointing a Special Measures Manager to take over the functions of the Accountable Person, where there is a significant failure or repeated failures to comply with their statutory duties.

## Building control reform

- 82 The Bill includes provisions to improve competence levels and accountability in the building control sector by creating a unified professional and regulatory structure for building control, changing and modernising the existing legislative framework.
- 83 The Building Safety Regulator will be required to establish and maintain a register of building inspectors (individuals) and building control approvers (either organisations or individuals). These changes introduced through the Bill are reflected in new titles for individuals and organisations.
- 84 Individuals and organisations currently known as ‘Approved Inspectors’ who wish to continue undertaking building control work will need to register as ‘building control approvers’.
- 85 The role of a registered building inspector being introduced through this Bill is new. A registered building inspector is an individual who will be able to provide advice to local authorities or registered building control approvers overseeing building work. Many inspectors in local authorities and Approved Inspectors are expected to transition to this role.
- 86 The Bill also removes the ability for a person carrying out building work on higher-risk buildings to choose their own building control body where building control is required. The Building Safety Regulator will be the building control body for these buildings.
- 87 Additional amendments to existing legislation will:
- give obligations to the local authority, registered building control approver and person carrying out the work to cancel an initial notice when the work covered by the notice becomes higher-risk building work;
  - amend the existing powers and obligations for local authorities, registered building control approver and the person carrying out the work to cancel initial notices for non-higher-risk building work;
  - give powers to the Building Safety Regulator to be able to enforce building regulations when non-higher-risk building work becomes higher-risk building work;
  - allow the Secretary of State to make regulations as to how the new regulatory regime for higher-risk buildings will be applied (if at all) to a public body designated under sections 5 or 54 of the Building Act 1984;
  - enable a local authority and the Building Safety Regulator to seek information from a

registered building control approver where it has ceased to supervise a project;

- require the Building Safety Regulator to set up the new national electronic register/portal of information governing the work of registered building control approvers;
- amend the existing powers to give the Secretary of State the ability to designate bodies for the purposes of publishing criteria for and/or approving an insurance scheme; and
- create a new process to appoint a new registered building control approver where an existing approver ceases to supervise work and the existing works may or may not have been signed off by the previous approver.

## Other provisions

### Strengthened Fire Safety Order

88 To support the whole-system approach to the management of building and fire safety in higher-risk buildings in occupation, the Bill includes provisions to strengthen the Fire Safety Order in order to support greater compliance and effective enforcement, which will better protect relevant persons' safety in regulated premises. These amendments are intended to be proportionately aligned to risk. The amendments will require that:

- the Responsible Person must record their fire risk assessment;
- the Responsible Person must not appoint a person to assist them with making or reviewing a fire risk assessment unless that person is competent;
- the Responsible Person must record their fire safety arrangements;
- for buildings consisting of two or more sets of domestic premises, the Responsible Person(s) must provide specific fire safety information to residents about relevant fire safety matters, and must keep records of the relevant fire safety matters;
- the Responsible Person must take reasonable steps to identify themselves to all other Responsible Persons in the same premises, inform them of their name and United Kingdom address and the part of the premises they consider themselves to be Responsible Person for and keep a record of that information;
- departing Responsible Persons must provide specific relevant fire safety information they hold to incoming Responsible Persons for premises or parts of premises for which they are responsible, keeping records of the fire safety information;
- for higher-risk buildings in England, the Responsible Person must identify and co-operate with Accountable Persons in the same premises to enable them to carry out their duties under the Building Safety Bill;
- increased financial penalties of unlimited fines apply for the criminal offences of impersonating an inspector, failing to comply with any requirements imposed by an

inspector, and failing to comply with requirements relating to the installation of luminous tube signs; and

- Article 50 of the FSO (recently amended by the Fire Safety Act 2021) which relates to the provision of guidance for Responsible Persons, be amended to expressly provide that the Court may take compliance or non-compliance with such guidance into account when considering offences of breach of the Order.

## Construction products

- 89 The current regulatory framework for construction products, derived from the EU Construction Products Regulation 2011 (EU No 305/2011) as retained in UK law, covers some of the products placed on the UK market. This framework only applies to products where a designated standard has been adopted or a UK Technical Assessment applies - some 400 product families. The Bill provides powers so that all construction products marketed in the UK fall under a regulatory regime, allowing them to be withdrawn from the market if they present a risk.
- 90 The Bill creates powers to make provision for regulation of all construction products placed on the UK market. Firstly, it takes powers to make regulations requiring manufacturers to ensure that the products they supply are safe.
- 91 The Bill also creates powers for the regulation of “designated products”, which covers the same products regulated by the EU framework.
- 92 The Bill creates the concept of a “safety critical product” and gives the Secretary of State the power to make regulations to place safety critical products on a statutory list. The Bill takes powers for the regulation of such products against safety critical standards.
- 93 The Bill creates powers to create new civil penalties and criminal offences for breach of the new regulations. The existing regime is mainly enforced locally by Trading Standards. The Bill creates powers for an enforcement regime to support the new regulatory regime as well as create additional enforcement powers for the existing regulatory regime for the Secretary of State, which will pave the way for us to set up a national regulator for construction products within the Office for Product Safety and Standards (OPSS) to discharge these powers. These powers will allow Trading Standards’ existing enforcement regime to be extended to cover the new regulatory requirements. The Bill also creates powers to allow for charging and provide for recovery of costs.
- 94 The Bill creates powers to make regulations allowing the sharing of information about construction products between regulators, which could include, for example, between the new national regulator for construction products, the Building Safety Regulator and local authority building control.

## Improving the competence of architects

- 95 The Bill introduces a power for the Architects Registration Board (ARB) to monitor competence of the architects on their Register. To use the title ‘architect’, a person must be on the Architects Registration Board’s register. Currently, architects are not required to undertake Continuing Professional Development (CPD) or any competence checks throughout their career.
- 96 This power will extend to all architects on the Register. The Architects Registration Board will set the criteria, in conjunction with other relevant bodies (such as the Royal Institute of British Architects) and after consultation with the sector. If an architect does not meet these requirements or is found to be guilty of professional misconduct or serious professional incompetence with regards to the criteria, the Architects Registration Board will have the power to remove them from

the Register.

- 97 Architects will be able to apply to the Architects Registration Board for time extensions if they are unable to meet the prescribed criteria by the set date. If they do not meet the criteria by the extended date, they will be removed from the Register.
- 98 Currently, if an architect is sanctioned, their ruling is listed on the Architects Registration Board website. The Bill amends the Architects Act 1997 to allow disciplinary orders to be listed alongside the architect's name on the Register, to increase transparency for consumers wishing to procure architectural services. The Architects Registration Board will create rules to determine the length of time until a disciplinary order is "spent" and can be removed from the Register.
- 99 The Bill will allow the Architects Registration Board to expand their list of chargeable services, as the current list is limited and does not cover the full range of services provided by the Architects Registration Board. This would be on a cost-recovery basis, as the Architects Registration Board is self-funded.

## Removal of the democratic filter

- 100 The Bill includes provisions that enable social housing complainants to escalate a complaint to the Housing Ombudsman service directly, once they have completed their landlord's complaints process, thereby increasing the speed of redress.
- 101 This is achieved by removing the existing requirement ('the democratic filter') for social housing residents wishing to escalate their complaint to the Housing Ombudsman to do this via a 'designated person'; that is, an MP, Councillor or recognised tenant panel, or wait eight weeks after the end of their landlords' complaints process.

## New Homes Ombudsman scheme

- 102 The Bill includes provisions that allow relevant owners of new build homes to escalate complaints to a scheme to be known as the New Homes Ombudsman scheme. The Secretary of State must make arrangements for a scheme to be available for complaints against members of the scheme to be investigated and determined by an independent person.
- 103 The New Homes Ombudsman scheme must meet minimum requirements set out in the Bill. The Bill includes provision for the Secretary of State to provide financial assistance to the New Homes Ombudsman scheme.
- 104 The Bill introduces a power to require developers, or developers of a specified description, to become, and remain, members of the New Homes Ombudsman and to provide information to new build homebuyers about the scheme, and makes provision for sanctions should developers breach these requirements. Developers who receive a sanction will be able to appeal that decision. The Bill includes the provision for the Secretary of State to make payments to enforcement bodies to investigate and impose sanctions in respect of breaches by a developer.
- 105 The Bill also includes provisions requiring the person who maintains the scheme to maintain a register of members, which must be available for inspection by members of the public.
- 106 Finally, the Bill introduces a power to issue or approve a code of practice about the conduct and workmanship expected of members of the New Homes Ombudsman scheme. Where a code of practice is issued or approved by the Secretary of State, the Secretary of State must ensure the current version of the code is published.
- 107 The New Homes Ombudsman scheme, (which will include provision about the matters in relation

to which complaints about members may be made under the scheme) must include provision for complaints about non-compliance with the code of practice.

## Structure of these notes

108 The clause-by-clause commentary in these notes follows a set structure. The explanatory notes for each clause are divided as follows:

### **Effect**

109 Details exactly what the clause is going to do. It also explains whether the clause needs to be considered in conjunction with other provisions of the Bill.

### **Background**

110 Explains what the current legal position is. This might be the position under an existing piece of legislation which is being textually amended by the Bill, or the position under common law. For example: 'this clause replaces X provision in the XX Act 2000' or 'this is a new provision'.

111 It also provides some explanation as to why this change to the law is being made by the Bill. For many of the clauses in the Bill this will relate to specific recommendations in the Independent Review.

### **Proposed use of power**

112 Where applicable, this section outlines how it is intended any powers to make regulations will be used.

### **Examples**

113 Where possible, examples are provided detailing how the provision will operate in practice. The descriptions provided are based on an assumption that the relevant provisions are enacted as proposed in the Bill.

114 A glossary of key terms is included in Annex B.

## Legal background

### Building Safety Regulator

115 The Building Safety Regulator will be established in the Health and Safety Executive (HSE) by amending the Health and Safety at Work etc. Act 1974.

### Higher-risk buildings in design and construction

116 The new measures in the design and construction phase of a higher-risk building's life cycle are based on strengthening the existing regime for regulating building work under the Building Act 1984, and the three sets of building regulations made primarily under the section 1 power to make building regulations. These are: the Building Regulations 2010; the Building (Approved Inspectors etc) Regulations 2010; and the Building (Local Authority Charges) Regulations 2010.

117 The dutyholders regime in design and construction builds on the Construction (Design and Management) Regulations 2015, which are health and safety regulations made under the Health and Safety at Work etc. Act 1974.

## Higher-risk buildings in occupation

- 118 Unlike the measures in design and construction, the more stringent building safety regime for higher-risk buildings in occupation is new and therefore does not require substantial amendments to current legislation.
- 119 The Landlord and Tenant Act 1985 is amended to imply terms into leases for a term of seven years or more of dwellings in higher-rise buildings so that building safety measures, the associated costs and the related charges of the ongoing safety management of the building may be passed onto leaseholders and will not be reliant on the service charge provisions in each lease. The landlord makes a commitment to the leaseholder to carry out the necessary measures, and to observe the statutory requirements in relation to raising charges; and the leaseholder makes a commitment to the landlord to pay a fair share of reasonable charges and co-operate with the building safety regime.
- 120 Further amendments being made to the existing section 20 consultation process in the Landlord and Tenant Act (1985). These will set out additional steps the landlord must undertake when embarking on defined building safety remedial works. The landlord must take reasonable steps:
- to ascertain whether any grant is payable in respect of the remediation works and if so to obtain the grant;
  - to ascertain whether all or any of the cost of remediation works may be met by a third party and if so to obtain monies from the third party; and
  - to ascertain whether any other prescribed kind of funding is available and to obtain such funding.
- 121 These amendments are designed to offer further protections to leaseholders, ensuring that all other cost recovery avenues are appropriately explored first. This does not change the existing liability of leaseholders to pay for any building safety works.

## Other provisions

### Architects

- 122 Measures to improve the competence of architects are achieved by amending the Architects Act 1997.

### Democratic filter

- 123 The Housing Act 1996 is amended to remove the democratic filter and speed up redress for social housing residents.

### Construction products

- 124 Regulation of construction products in the EU is under the provisions of the EU Construction Product Regulations (305/2011). This was brought into UK law immediately following Transition Day by the European Union (Withdrawal) Act 2018 and amended for the UK by the Construction Products (Amendment etc.) (EU Exit) Regulations 2019 (2019/465) and the Construction Products (Amendment etc.) (EU Exit) Regulations 2020 (2020/1359).
- 125 This sets out mandatory requirements for construction products where an EU harmonised standard exists (or a European Technical Assessment) and ensures that in the UK market the same

products perform to the same standard. In the UK these are “designated products” (or subject to a UK Technical Assessment) and the Secretary of State has powers to add to or amend designation.

126 There is a general safety requirement that applies to products to be used by consumers only (implemented in the General Product Safety Regulations 2005 (2005/1803)).

127 A list of legislation referenced or amended by the Building Safety Bill is as follows (alphabetised):

- Architects Act 1997;
- Building Act 1984;
- The Building Regulations 2010;
- Commonhold and Leasehold Reform Act 2002;
- The Construction Products Regulations 2013
- The Construction Products (Amendment etc.) (EU Exit) Regulations 2019
- The Construction Products (Amendment etc.) (EU Exit) Regulations 2020
- Regulation (EU) No 305/2011 (regulation for laying down harmonised conditions for the marketing of construction products) (retained EU Law);
- Criminal Justice Act 2003;
- Data Protection Act 2018;
- Defective Premises Act 1972;
- Enterprise and Regulatory Reform Act 2013;
- Environmental Protection Act 1990;
- European Communities Act 1972;
- European Union (Withdrawal) Act 2018;
- Fire and Rescue Services Act 2004;
- Freedom of Information Act 2000;
- Health and Safety at Work etc. Act 1974;
- Housing Act 1996;
- Housing Act 2004;
- Housing and Regeneration Act 2008;
- Human Rights Act 1998;
- Land Registration Act 2002;

- Landlord and Tenant Act 1985;
- Landlord and Tenant Act 1987;
- Limitation Act 1980;
- Local Government Act 1972;
- Local Government etc (Scotland) Act 1994;
- Local Government (Miscellaneous Provisions) Act 1982;
- Parliamentary Commissioner Act 1967;
- Prevention of Damage by Pests Act 1949;
- Public Health Act 1961;
- Regulation (EU) No 305/2011 (regulation for laying down harmonised conditions for the marketing of construction products) (retained EU Law);
- The Regulatory Reform (Fire Safety) Order 2005
- Sentencing Act 2020;
- Sustainable and Secure Buildings Act 2004;
- Tribunals, Courts and Enforcement Act 2007.

## Territorial extent and application

128 Clause 145 sets out the territorial extent of the Bill, that is the jurisdictions of which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.

129 The Bill extends to England and Wales only, with the exception of:

- Part 1, which contains an overview of the Bill and extends to the whole of the UK.
- Clause 2(2) and Schedule 1, which amend the Health and Safety at Work etc. Act 1974 and extend to England, Wales and Scotland.
- Clause 133 and Schedule 9, which relate to construction products and extend to the whole of the UK.
- Clauses 135 and 136, which amend the Architects Act 1997 and extend to the whole of the UK.
- Clause 139, which provides for a review of the regulatory regime; clause 140, which deals with financial provision; clause 142 (Secretary of State's power to make consequential provision); and clauses 144 to 147, which contain general provisions and the short title of the Bill, extend to the whole of the UK.

130 The Bill applies to England only, with the following exceptions:

- Clause 1 is an overview of the Act. It technically applies to the whole of the UK but is inert material and has no practical effect.
- Clauses 21 and 22, and Schedule 2, which relate to investigatory powers for authorised officers, apply to England and Wales.
- The following apply to the whole of the UK: clause 133 and Schedule 9, which relate to construction products; clauses 135 and 136 which amend the Architects Act 1997, clause 139, which provides for a review of the regulatory regime; clause 140, which deals with financial provision; and clauses 142 and 144 to 147, which make general provisions in relation to regulations, commencement and extent and the short title of the bill.
- Schedule 1 applies to England and Wales and Scotland (apart from paragraphs 3, 4 and 8(3), which only apply to England, and 8(4), which only applies to England and Wales). Clause 2(2) introduces Schedule 1 and therefore also has application outside England.
- The Part 3 provisions and Schedules 4, 5 and 6, which amend the Building Act 1984, mostly also apply to Wales, and a very limited number of these provisions apply only to Wales. Please refer to the table at Annex A for a detailed list of these provisions.
- Clause 125, which amends the Defective Premises Act to allow for compensation where defective work in relation to refurbishments has rendered a dwelling unfit for habitation applies in England and Wales.
- Clause 126, which deals with changes to the limitation periods for the causes of action in section 38 Building Act 1984 and section 1 Defective Premises Act 1972 applies in England and Wales.
- Clause 134, which amends the Regulatory Reform (Fire Safety) Order 2005 applies in England and Wales.
- Clauses 138 (liability of officers of body corporate etc) and 142 (Crown application) apply to England and Wales.
- Clause 143, which gives Welsh Ministers the power to make consequential provision applies to Wales only.

131 There is a convention that the United Kingdom Parliament will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned.

132 A Legislative Consent Motion is being sought from Senedd Cymru in relation to the amendments in Part 3 and its associated Schedules which apply to Wales. This is because the regulation of building (other than in limited circumstances, as laid out in paragraph 186 of Schedule 7A to the Government of Wales Act 2006) is within the legislative competence of the Senedd. A Legislative Consent Motion is being sought from Senedd Cymru in relation to clause 134 which amends the

Regulatory Reform (Fire Safety) Order 2005. This is because fire safety is within the legislative competence of the Senedd. A legislative consent motion is being sought from Senedd Cymru in relation to clause 125, which amends the Defective Premises Act 1972, allowing for compensation where work in relation to work on a building which has rendered a dwelling unfit for habitation. This is because, while the safety of, and liability for, services supplied to consumers is a reserved matter, the duty contained in this clause is owed to anyone who commissions the work and anyone whose dwelling is affected by the work. The provision therefore goes further than dealing with liability for services provided directly to consumers. Legislative consent is also being requested from Senedd Cymru in relation to clause 143, which gives Welsh Ministers power to make provision consequential on the main provisions of the Bill that apply to Wales and deal with devolved subject matters. For completeness, legislative consent is also being sought in relation to Part 1 Clause 1, since the signposting provision, while inert, would technically be within the legislative competence of the Senedd, and consent is being sought in relation to clause 142: while a general provision, clause 142 gives the Secretary of State the power to make consequential amendments to ensure that the provisions of this Bill can be made to work effectively, so could be used in relation to the operative provisions in Part 3.

- 133 A Legislative Consent Motion is not being sought from the Northern Ireland Assembly in relation to clauses 135 and 136 which make changes to the regulation of the architectural profession. Though the regulation of architects is within the devolved competence of the Northern Ireland Assembly it has not legislated to create a regulator for architects and the Architects Registration Board (ARB), the body to which the proposed amendments to the Architects Act 1997 relate, operates in Northern Ireland and is a UK-wide regulator. A Legislative Consent Motion is therefore not being sought from the Northern Ireland Assembly; informal consent has been sought through exchange of letters.
- 134 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

# Commentary on provisions of the Bill

## Part 1: Introduction

### Clause 1: Overview of Act

#### **Effect**

135 Clause 1 is intended to assist the reader of the Bill to understand the provisions that follow. It sets out the reason why the Bill has been brought forward and signposts the main elements of the Bill. This clause is not intended to have legal effect; rather it guides the reader through the remaining provisions of the Bill, which are intended to have legal effect.

#### **Background**

136 This is a new provision. It highlights that this Bill amends the Building Act 1984.

## Part 2: The Regulator and its functions

### The regulator and its functions

#### Clause 2: The Building Safety Regulator

#### **Effect**

137 Clause 2 establishes the new Building Safety Regulator within the Health and Safety Executive.

138 Clause 2 also introduces Schedule 1, which amends the Health and Safety at Work etc. Act 1974 to make provisions supporting the creation of the Building Safety Regulator within the Health and Safety Executive.

#### **Background**

139 This is a new provision.

140 Following advice from Dame Judith Hackitt (as Independent Ministerial adviser on the Building Safety Regulator), the Government intends that the Building Safety Regulator will take the form of a new division within the Health and Safety Executive.

#### Clause 3: The regulator: objectives and regulatory principles

#### **Effect**

141 Clause 3 sets out the objectives that the Health and Safety Executive must follow when exercising its functions as the Building Safety Regulator (such functions are referred to as building functions), and certain principles which will guide the way the Building Safety Regulator undertakes its main operational functions.

142 The first objective is to secure the safety of people in or about buildings. This aim applies to risks to safety that are associated with buildings (rather than, for example, broader issues of general crime and disorder). The objective covers people either in buildings or in their immediate vicinity, as (for example) people close to a building could be hit by material from the building.

- 143 The second objective is to improve the standard of buildings. The Health and Safety Executive could fulfil this objective by taking steps that either improve the quality of a standard or lead to more consistent compliance with an existing standard. A standard is defined in clause 29 and can cover the requirements of the building regulations, guidance in Approved Documents, as well as non-legislative British Standards set by the British Standards Institution, and standards recognised within industry.
- 144 When undertaking a specific activity, the Building Safety Regulator may consider that only one objective is relevant, or that one objective should carry more weight than the other.
- 145 The Building Safety Regulator will not be responsible directly for the construction or management of buildings - this Bill, alongside the Building Act 1984 and building regulations, assigns clear duties in respect of those matters. For example, the Accountable Person is primarily responsible for ensuring that a higher-risk building is managed safely when occupied (see later clauses). The intention of the statutory objective is to ensure that the Health and Safety Executive exercises its regulatory functions with the aim of securing safety and improving standards.
- 146 Clause 3 then sets out principles to which the Building Safety Regulator must have regard when delivering its main operational functions. These principles are focused on the way in which the Building Safety Regulator should undertake its main operational functions. The principles reflect established regulatory good practice.
- 147 Under the principles, operational activity should be consistent, transparent and accountable, which could be secured by grounding operational activity on published policy and guidance, and publishing performance metrics about how the activity was undertaken. Activity should be targeted on cases where action is needed, and be proportionate, rather than (for example) requiring excessively costly measures for little benefit in terms of reduction in risk.
- 148 All the Building Safety Regulator’s building functions are subject to the principles, except the regulator’s general functions in clauses 4 to 6. This reflects that these general functions focus on driving culture change and improvement across whole industries, or monitoring safety and standards across all buildings. When undertaking these very general functions, which are not focused on enforcing in individual cases, certain of the principles (in particular targeting action only at cases where action is needed) are not appropriate.
- 149 Clause 3 defines the Building Safety Regulator’s “building functions” as:
- 1) Building functions provided for in this Bill, the Building Act 1984, and regulations made under those two pieces of legislation;
  - 2) Functions of the Health and Safety Executive defined as building functions by regulations made under this clause;
  - 3) Functions of the Health and Safety Executive provided for under the Health and Safety at Work etc. Act 1974 that relate directly to the other building functions (such as exercising the powers in new section 11A Health and Safety at Work etc. Act 1974, which enables the Health and Safety Executive to make arrangements to deliver its building functions).
- 150 Building functions are subject to the Building Safety Regulator’s objectives, would form part of the Building Safety Regulator’s strategic plan (see clause 17), are relevant to powers to share information and duties to cooperate (see clause 26 and Schedule 3) and are subject to the regular review of the regulatory system (see clause 139).

## **Background**

151 Clause 3 is a new provision.

152 The principles draw on the example of section 21 of the Legislative and Regulatory Reform Act 2006. Utilising established principles of regulatory best practice, which apply to Health and Safety Executive's existing regulatory functions, will help ensure that the Health and Safety Executive delivers coherent and effective regulation across its different functions. The principles reflect both the approach the Health and Safety Executive takes to its existing functions, and the proportionate approach the Health and Safety Executive will take to its new building functions.

### **Example 1**

When making proposals to the Secretary of State for changes to the building regulations, the Building Safety Regulator could act in line with its objectives by suggesting changes to the regulations to seek to resolve a recurring problem with standards of buildings.

### **Example 2**

When undertaking its functions in respect of higher-risk buildings under the new regime in Part 4 of the Bill, the Building Safety Regulator could exercise its functions with a view to securing the safety of people in or about buildings by preparing best practice guidance encouraging dutyholders to deliver their responsibilities for resident safety effectively.

### **Example 3**

Where dutyholders do not respond positively to encouragement and information, active enforcement of the new regime could also help meet the objective to exercise its functions with a view to securing safety.

When enforcing Part 4, the Building Safety Regulator will have regard to the principles. We expect that the regulator will operate consistently and transparently, e.g. on the basis of a published enforcement framework, which is the approach suggested by the Regulator's Code. The action taken will be proportionate to the seriousness of the breach and targeted at cases where action is needed.

## **Clause 4: Duty to facilitate building safety: higher-risk buildings**

### **Effect**

153 Clause 4 requires the Building Safety Regulator to assist and encourage those responsible for the safe construction and management of higher-risk buildings, as well as residents in those buildings, to secure the safety of people in or around those buildings in relation to building safety risks. This clause should be read alongside Part 3 and Part 4 of the Bill.

154 The effect of clause 4 is to ensure that the Building Safety Regulator takes a proactive role and does not limit its regulatory activity in respect of higher-risk buildings to enforcement. This clause requires that the Building Safety Regulator takes other steps to enhance the safety of people in higher-risk buildings in relation to building safety risks, such as developing and publishing best

practice guidance or running workshops with those responsible for building and managing higher-risk buildings.

155 Clause 4 does not create any individual right to assistance in a particular case.

### **Background**

156 This is a new provision.

#### **Example 1**

The Building Safety Regulator could meet this duty in respect of Accountable Persons and Building Safety Managers by setting up working groups to understand the obstacles to compliance with the new regime, and then taking steps to overcome difficulties identified such as providing better quality information and guidance to these groups.

#### **Example 2**

The Building Safety Regulator could test publicity materials aimed at residents of higher-risk buildings with the residents' panel to help ensure that the Building Safety Regulator's communications with residents are well-targeted and effective.

## **Clause 5: Duty to keep safety and standard of buildings under review**

### **Effect**

157 Clause 5 requires the Building Safety Regulator to monitor the safety of people in buildings and the standard of buildings, on an ongoing basis.

### **Background**

158 This is a new provision.

#### **Example**

The Building Safety Regulator could meet this duty by working with its Building Advisory Committee to review the structural safety of buildings, for example in response to a number of buildings, built using the same materials and construction methods, collapsing. Following this review, if the Building Safety Regulator considers that an amendment to the building regulations is needed to strengthen structural safety of buildings which use that particular construction method and material, the Building Safety Regulator will make this recommendation to the Secretary of State, following a public consultation.

## **Clause 6: Facilitating improvement in competence of industry and building inspectors**

### **Effect**

159 Clause 6 provides that the Building Safety Regulator must provide assistance and encouragement

to persons in the built environment industry and to registered building inspectors to facilitate improvement of competence of organisations and individuals in the industry, or members of the profession.

### **Background**

160 This is a new provision. The Independent Review recognised competence as an area where improvement was needed across the built environment sector.

#### **Example 1: Functions in relation to industry competence**

Under this duty, the Building Safety Regulator may undertake activities such as setting the strategic direction of the competence committee (see clause 10) to increase competence within the built environment industry, carrying out research and analysis, convening working groups, developing a communications strategy and other activities which support this duty. For example, the Building Safety Regulator may use the insights it gains into the competence levels within the built environment industry to focus the committee's activities on areas where additional work is most needed and can have the most impact.

The Building Safety Regulator can also develop and implement a communications plan with the industry competence committee to encourage industry's use of the competence frameworks and to highlight the legal requirements regarding competence.

#### **Example 2: Functions in relation to registered building inspectors**

Under this duty, the Building Safety Regulator can develop a strategy to increase the competence of registered building inspectors through advice, guidance, training, working groups, advisory committees or research and analysis. One way the regulator might do this could be through commissioning research to look into current competence within the profession and producing advice on key areas for improvement. Following this advice, the Building Safety Regulator could then publish new guidance for registered building inspectors on how to improve their competence and recommend training to help achieve this.

## **Clause 7: Proposals and consultation relating to regulations**

### **Effect**

161 Clause 7 creates a power for the Building Safety Regulator to propose regulations to the Secretary of State and sets out the process the Building Safety Regulator must follow when it does so. This approach reflects the fact that the Building Safety Regulator will, in most cases, be best positioned to propose changes to the regulations.

162 The Secretary of State will be responsible for the making of regulations and can make regulations that have not been proposed by the Building Safety Regulator.

163 Clause 7 ensures that there will always be consultation before the making of regulations. The Building Safety Regulator must consult on proposed regulations before recommending them to

the Secretary of State, and the Secretary of State must consult before making regulations which have not been proposed by the Building Safety Regulator.

- 164 This clause applies to regulations made under Parts 2 and 4 of the Bill, with the exception of regulations that change the scope of the higher-risk regime (made under clause 59, clause 62 and clause 65), where there are specific procedures in place for the making of regulations.

### **Background**

- 165 Clause 7 is a new provision which applies exclusively to regulations made under this Bill. The clause follows the same principles as section 11(3) and section 50 of the Health and Safety at Work etc. Act 1974.
- 166 The Bill provides for an equivalent provision (new section 120B Building Act 1984) at Schedule 5, paragraph 77 in relation to regulations which are made under the Building Act 1984, including in relation to regulations made under the new provisions inserted into the Building Act 1984 by Part 3 of this Bill.

### **Example**

If the Building Safety Regulator wishes to propose amendments to regulations to the Secretary of State setting out changes to the content of Safety Case Reports for higher-risk buildings under clause 85 in relation to fire safety, the Building Safety Regulator would first need to consult.

The Building Safety Regulator would have discretion over whom to consult and might consult (amongst others) government departments who have a strong policy interest, existing committees of the Building Safety Regulator (such as the residents' panel), and fire and rescue authorities. The Building Safety Regulator would also have the option to undertake a full public consultation.

## **Clause 8: Duty to establish system for giving of building safety information**

### **Effect**

- 167 Clause 8 requires the Building Safety Regulator to make arrangements for a person to establish and operate a system for the voluntary reporting of information about building safety to the person operating the system.

### **Background**

- 168 This is a new provision and is modelled on existing voluntary occurrence reporting systems used in industries including structural safety and aviation. Recommendation 1.4 of the Independent Review recommends that the existing Confidential Reporting on Structural Safety (CROSS) be extended and strengthened to cover a wider range of engineering safety concerns. This clause will contribute to the fulfilment of this recommendation whilst retaining flexibility for another person to operate the voluntary occurrence reporting scheme.
- 169 The system of voluntary reporting of information about building safety is intended to promote a positive culture within safety management systems.
- 170 Reports will be received, anonymised, and then analysed and published by the person operating the system. Reports will be made on all buildings including those which are not higher-risk

buildings. Safety occurrences which cause a significant risk to life safety in higher-risk buildings must be reported through mandatory occurrence reporting. Voluntary occurrence reporting is not intended to be used for enforcement action, but should confidentially capture occurrences that are of a lower risk level and are of value to industry for information sharing, intelligence gathering and improvement of safety within the built environment.

- 171 Guidance will be provided to set out what can be reported under the voluntary occurrence reporting system. The specified manner of reporting is envisaged to be via an online portal.

### Example

During a concrete pre-pour quality inspection on the 4th floor of an apartment block, shear links to a slab over one column are found to be at the incorrect spacings. The issue is resolved immediately on site and doesn't present a significant risk to life safety here, but a similar issue could be present but undetected on other sites and present a bigger danger elsewhere. The person working on the incident reports it through the voluntary occurrence reporting system, where it is then analysed, anonymised and published by the person operating that system. By voluntarily reporting this issue the important details and lessons learned are shared with industry. This release of intelligence would increase industry awareness of the issue and enable workers to better identify and resolve it should it occur elsewhere, averting danger that may otherwise have gone unnoticed.

## Committees

### Clause 9: Building Advisory Committee

#### Effect

- 172 Clause 9 sets out a duty for the Building Safety Regulator to set up an advisory committee. The name of this new committee will be the Building Advisory Committee. This committee will provide advice and information to the Building Safety Regulator in relation to its functions, other than issues of competence of persons within the building industry or registered building inspectors.

- 173 The existing Building Regulations Advisory Committee for England is to be abolished.

#### Background

- 174 This is a new provision, and is in addition to the general powers to set up committees relating to building functions and pay committee members under new section 11A of the Health and Safety at Work etc. Act 1974.
- 175 The Independent Review recommended that the Government should create a new structure to validate and assure guidance, oversee the performance of the built environment sector and provide expert advice.

### Example

The Building Safety Regulator exercises its duty and sets up an advisory committee called the Building Advisory Committee. In carrying out its functions, the Building Safety Regulator identifies an emerging issue relating to the safety of buildings in Part B of the guidance to the Building Regulations which requires consideration and potentially some form of action. In assessing the issue, the Building Safety Regulator asks the Building Advisory Committee for advice on the matter. The Building Advisory Committee investigates the issue and provides the Building Safety Regulator with expert advice. The Building Safety Regulator considers this technical advice and uses this information to help make an informed recommendation to improve Part B guidance to the Building Regulations.

## Clause 10: Committee on industry competence

### **Effect**

- 176 Subsection (1) requires the Building Safety Regulator to establish an industry competence committee and provide support as necessary (for instance by providing the secretariat function).
- 177 Functions of the committee may include other matters but must include the functions set out in subsection (2), which include monitoring industry competence and facilitating its improvement, advising the Building Safety Regulator and others about industry competence, and providing guidance on industry competence.
- 178 The Building Safety Regulator may set up sub-committees of the committee, to consider specific issues or areas of interest.

### **Background**

- 179 This is a new provision that will require the Building Safety Regulator to establish an industry competence committee with the functions specified in the clause. This is in addition to the general powers to set up committees relating to building functions and pay committee members under new section 11A of the Health and Safety at Work etc. Act 1974.
- 180 The Independent Review identified that the current landscape for ensuring competence is fragmented, complex and inconsistent - different disciplines have various routes for assessing competence which are not always clear or consistent. The Review recommended that the built environment industry should work together to develop proposals for a system for competence oversight, which include the establishment of an industry-led committee within the Building Safety Regulator to ensure a consistent approach to improving competence across industry.

### Example 1: Advising the Building Safety Regulator

The Building Safety Regulator has appointed an industry competence committee as required by this provision. The committee provides advice to the Building Safety Regulator as the Regulator develops statutory guidance to the industry advising on how to comply with the legal requirements for industry competence.

The committee also provides wider advice to the Building Safety Regulator on competence to support the Building Safety Regulator's wider industry competence function. The committee oversees, advises and monitors the built environment sector in relation to competence requirements for higher-risk buildings, including by reviewing sector-specific competence frameworks against the overarching competence framework standard (currently being developed by British Standards Institution), and makes recommendations for improvements. It publishes non-statutory guidance on the competence frameworks and advice and guidance for actors in the system to help them determine competence, and to signpost schemes or registers which the committee has assessed as meeting the overarching competence framework standard.

#### Example 2: Working with stakeholders

The committee convenes stakeholders to enhance competence within industry. This provides a forum for industry to work collaboratively to monitor, refresh and review competence frameworks and to drive competence more widely.

#### Example 3: Research and analysis

The committee carries out research and analysis to support all of the above work. One example could be an analysis of the effectiveness of the competence schemes operated in various sectors and whether there are gaps that need to be addressed for any particular sector.

### Clause 11: Residents' panel

#### **Effect**

- 181 Clause 11 requires the Building Safety Regulator to establish a committee known as the residents' panel. The purpose of the panel is to ensure that residents have a voice in the work of the Building Safety Regulator, and the Building Safety Regulator has a broad power to consult the residents' panel on any of its functions which impact the residents of higher-risk buildings.
- 182 The panel must include residents, and may also have members from the following groups: owners of residential units (e.g. flats) in higher-risk buildings who are not occupying the property (who could, for example, be impacted by expenses relating to the higher-risk building); and groups or organisations which are representative of residents and/or non-occupying leaseholder owners, advocate for them or support them.
- 183 The Bill also requires that the Building Safety Regulator must consult the residents' panel on certain matters which it is expected would be of particular interest and importance for residents of higher-risk buildings, specifically:
- Under this clause, the residents' panel must be consulted on guidance to residents on their rights and obligations under the new regulatory regime for higher-risk buildings in occupation.
  - Under this clause, the residents' panel must be consulted on guidance relating to any

duties under clause 89 (provision of information etc. to the regulator, residents and other persons) where the guidance is about information provision to residents.

- Under this clause, the residents' panel must be consulted on guidance relating to clause 91 (residents' engagement strategy), clause 92 (requests for further information), clause 93 (complaints procedure operated by the principal accountable person), clause 95 (duties on residents and owners) or regulations made under any of those clauses.
- Clause 17 requires that the Building Safety Regulator must consult the residents' panel on its strategic plan.
- Clause 94 requires that the regulator consult the residents' panel on its system for dealing with complaints from residents that are escalated to the Building Safety Regulator.

184 Clause 11 should also be read alongside clause 20, which requires the Building Safety Regulator to publish an annual statement on how it engages with the residents' panel, in addition to any other wider engagement with residents and related groups.

### **Background**

185 This is a new provision. The provision reflects that the Independent Review found that trust in the building regulation and fire safety system needs to be rebuilt, with resident involvement and engagement placed at the heart of the new system. This is in addition to the general powers to set up committees relating to building functions and pay committee members under new section 11A of the Health and Safety at Work etc. Act 1974.

186 Having in place a residents' panel will ensure that residents are able to contribute to key policy changes related to residents made by the Building Safety Regulator and also empower the Building Safety Regulator to call on the expertise of the residents' panel for insight and support, wherever necessary.

### **Clause 12: Committees: power to amend or repeal**

#### **Effect**

187 Clause 12 enables the Secretary of State to amend the provisions creating the three statutory committees (the Building Advisory Committee, the committee on industry competence and the residents' panel), and to make consequential changes to the Act itself, by regulations subject to the affirmative procedure.

#### **Background**

188 This is a new provision. Clause 9, clause 10 and clause 11 of this Bill make provision for the creation of a Building Advisory Committee, a committee on industry competence, and a residents' panel.

189 The Building Safety Regulator has general powers to set up committees and change their remit over time under new section 11A(3) of the Health and Safety at Work etc Act 1974. The Government expects the role of the Building Advisory Committee, the committee on industry competence and the residents' panel to evolve over time. These three committees could have been set up under this general power to allow for this flexibility, without any specific provision on the

face of the Bill.

- 190 Given the importance of these committees to the delivery of the reforms recommended by the Independent Review, the Government concluded that the role of the committees should be made clear in legislation, and any future changes in the role of the committees overseen by Parliament through this delegated power.

### Example

Over time the role and function of these committees and the Building Safety Regulator itself could change, for example if the scope of the more stringent regulatory regime changes. In such instances, the effective working of the Building Safety Regulator could be supported by a change in the remit or membership of the committees, or their replacement with a more effective alternative.

The use of this power in relation to the three committees could involve:

- In relation to the Building Advisory Committee, the regulation-making power could be utilised once the Building Safety Regulator and industry have matured, such that their respective roles in developing proposals for guidance and regulations need adapting following experience.
- In relation to the committee on industry competence, the Government considers that the committee's role is essential in the coming years to ensure the delivery of the Independent Review's recommendations on industry competence. The long-term objective of the policy is that the built environment industry will mature to the point where it can take on greater responsibility for its own standards-setting and competence oversight. Therefore, the eventual repeal of the committee on industry competence provisions could be an indication of success.
- In relation to the residents' panel, the provisions would need to be reviewed if there are major changes in the scope of the higher-risk buildings regime. For example, if hospitals were brought into scope of the Part 4 occupation regulatory regime, consideration would be given as to whether to extend the panel to include patients and NHS staff, and representatives of those groups. In those circumstances the consequential amendments power might also be used to amend clause 20.

## Staff etc

Clause 13: Local authorities and fire and rescue authorities: assistance etc to regulator; Clause 14: FSO authorised persons: assistance etc to regulator; and Clause 15: Provision of assistance etc: supplementary

## **Effect**

- 191 Clause 13 enables the Building Safety Regulator to call on assistance from local authorities and fire and rescue authorities when regulating higher-risk buildings. It ensures that local authorities and fire and rescue authorities have the legal power to provide assistance requested by the Building Safety Regulator.
- 192 These provisions also extend to the provision of local authority support to the Building Safety Regulator, when the Building Safety Regulator acts as building control authority for a non-higher-risk building (notably in a mixed development including a higher-risk building).
- 193 Clause 13 enables the Building Safety Regulator to direct a local authority or fire and rescue authority to provide support requested under that clause. The clause includes safeguards, which are intended to ensure that direction of these independent bodies (who are subject to democratic local accountability) is not undertaken lightly:
- Before making a direction, the Building Safety Regulator must first make a formal, written request to the local authority or fire and rescue authority setting out the reason why the assistance is being requested. The local authority or fire and rescue authority must be given the opportunity to consider whether it can provide the assistance requested, or to give reasons why this is not possible.
  - If the local authority or fire and rescue authority does not undertake the requested activity, the Building Safety Regulator may direct the relevant authority to do so. The Building Safety Regulator must have considered any reasons provided by the authority for not undertaking the activity, still consider it expedient for the authority to undertake the activity and have secured the consent of the Secretary of State for the direction.
- 194 Clause 14 enables the Building Safety Regulator to call on assistance from Crown Premises Fire Safety Inspectors, appointed by the Secretary of State under the Fire Safety Order as ‘FSO authorised persons’, when regulating higher-risk buildings. It ensures that these FSO authorised persons have the legal power to provide assistance requested by the Building Safety Regulator. This provision is intended to be used for Crown premises within scope of the Part 4 occupation regime.
- 195 Clause 14 does not contain a power to direct because FSO authorised persons are Crown servants. If a request for support by the Building Safety Regulator were not agreed and the Building Safety Regulator considered securing such support from FSO authorised persons to be essential, the Building Safety Regulator may approach the Secretary of State to request their assistance.
- 196 Clause 15 makes further provisions in relation to the assistance to be provided by local authorities, fire and rescue authorities and FSO authorised persons. Clause 15 enables appropriate funding to be provided for the activity requested from local authorities and fire and rescue authorities, and any activity necessary to support this.
- 197 Clause 15 achieves this by enabling funding to be provided both through grants from the Secretary of State and enabling regulations to be made setting out how the Building Safety Regulator would reimburse local authorities and fire and rescue authorities for costs incurred in supporting it. FSO authorised persons are Crown servants and can be supported administratively by the Government without further legislation.
- 198 Clause 15 places a duty on fire and rescue authorities and local authorities to use competent staff

when supporting the Building Safety Regulator. The Secretary of State will ensure that FSO authorised persons are sufficiently competent.

- 199 Clause 15 also enables the Secretary of State to make regulations in respect of the provision of support by local authorities, fire and rescue authorities, or FSO authorised persons to the Building Safety Regulator.

### **Background**

- 200 Clause 13, clause 14 and clause 15 are new provisions.

201 The Independent Review found that major regulatory decisions on higher-risk buildings could be improved by bringing together Health and Safety Executive expertise, local authority building control expertise (and where appropriate, expertise from the private sector) and fire safety expertise from fire and rescue authorities. Clause 13 and clause 14 are intended to enable the Building Safety Regulator to secure the involvement of local authorities and fire and rescue authorities in decision-making, to secure the objectives of the Independent Review.

- 202 For Crown premises, FSO authorised persons (otherwise known as Crown Premises Fire Safety Inspectors) act as the enforcement authority under the Fire Safety Order (see article 25(1)(e)). Therefore, it is appropriate that for Crown premises within scope of the regime, the Building Safety Regulator works closely with FSO authorised persons in decision-making on those buildings.

### **Example**

When the Building Safety Regulator acts as the building control authority for higher-risk buildings, the Building Safety Regulator can use these provisions to put in place a “multi-disciplinary team” including a fire safety expert from the relevant Fire and Rescue Service (or a FSO authorised person for Crown premises) and a building control specialist from the relevant local authority. Before taking key regulatory decisions such as agreeing that construction can start after reviewing full plans at Gateway two, the Building Safety Regulator would be able to take expert advice from the fire and rescue authority and local authority.

Under its general powers (notably new section 11A Health and Safety at Work etc. Act 1974), the Building Safety Regulator could also secure expertise from the private sector (where appropriate) to support the work of the multi-disciplinary team.

The power to direct would be used in exceptional circumstances. Local authorities and fire and rescue authorities will be under duties to cooperate with the Building Safety Regulator (and it with them) under Schedule 3 in respect of the Building Safety Regulator’s building functions for higher-risk buildings and any relevant function of the authorities.

It is expected that the Building Safety Regulator will work cooperatively with fire and rescue authorities and local authorities to secure support from them. If the local authority or fire and rescue authority in the area where the higher-risk building is located is unable to provide support, the Building Safety Regulator

could seek support from other fire and rescue authorities and local authorities whose capability is less stretched, or from the private sector.

If there were a consistent problem with a fire and rescue authority or local authority not being able to provide support (for instance an unwillingness to employ any staff with the requisite competence), the Building Safety Regulator might consider that direction was necessary to secure its ability to effectively regulate higher-risk buildings in that area.

## Clause 16: Guidance about the provision of assistance

### **Effect**

203 Clause 16 enables the Building Safety Regulator to prepare guidance aimed at local authorities, fire and rescue authorities and FSO authorised persons about how they provide assistance to the Building Safety Regulator in the regulation of higher-risk buildings under clause 13, clause 14 and clause 15. Local authorities, fire and rescue authorities and FSO authorised persons must have regard to such guidance, which can be issued only with the consent of the Secretary of State.

### **Background**

204 This is a new provision.

### **Example**

The guidance could set out what type of competence (skills, knowledge, experience and behaviours) should be demonstrated by local authority building control specialists, when supporting the Building Safety Regulator's work on any complex and higher-risk construction projects, and in order to comply with the requirements around competence in clause 15.

## Plans and reports

### Clause 17: Strategic plan; and Clause 18: Revised strategic plans

### **Effect**

205 Clause 17 creates a requirement for the Building Safety Regulator to produce a strategic plan specifying how the Building Safety Regulator proposes to carry out its building functions during the period to which the plan applies.

206 Given that residents are intended to be at the heart of the new regulatory system, the Building Safety Regulator must consult its residents' panel on the draft plan (and any other persons it considers appropriate) before seeking approval for the plan from the Secretary of State.

207 Once approved by the Secretary of State, the plan must be published and adhered to by the Building Safety Regulator. The first plan must be submitted by the Building Safety Regulator to the Secretary of State for approval as soon as reasonably practicable following the commencement of clause 17. A new plan must be submitted to the Secretary of State before the period covered by the existing plan finishes.

208 Clause 18 provides that a strategic plan may be revised at any time. The Building Safety Regulator may submit a revised plan for the Secretary of State's approval, or the Secretary of State may require that the Building Safety Regulator submit a revised plan. The revised plan must relate to the remainder of the period to which the current plan relates, or a period that the Secretary of State and the Regulator agree it should apply to. This ensures that should a major new risk to building safety be identified or a major incident occur which could require a change of priorities, the Secretary of State and Building Safety Regulator are able to put in place a revised plan to reflect those priorities.

### **Background**

209 Section 11(5)(a)-(b) of the Health and Safety at Work etc. Act 1974 requires the Health and Safety Executive to submit particulars of what it proposes to do for the purposes of performing its functions, which must be approved by the Secretary of State and followed by the Health and Safety Executive. Under section 12(1) the Secretary of State may approve the Health and Safety Executive's proposals with or without modifications.

210 Schedule 1, paragraph 2 excludes building functions from the requirement under section 11(5)(a)-(b) of the Health and Safety at Work etc. Act 1974 to ensure that this new provision (clause 17) applies exclusively to the Building Safety Regulator's building functions. The rationale for creating a new requirement for a plan specifically relating to the Building Safety Regulator's building functions is to reflect the importance and distinctiveness of the Health and Safety Executive's new building functions, and to allow for the provision of consultation requirements (notably with the residents' panel) appropriate to the building functions.

### **Example**

The only specific requirement for the content of the strategic plan is that it must set out how the Building Safety Regulator proposes to carry out its building functions in the relevant period. The detail of the plan will be a matter for the Building Safety Regulator and Secretary of State to determine. The strategic plan will likely include information such as the Building Safety Regulator's priorities for the period, its key performance and success criteria, and the key risks to delivery.

For its health and safety functions, the Health and Safety Executive publishes a more detailed business plan for each year to support delivery of the plan agreed by Ministers. While not a statutory requirement, it is expected that the strategic plan may be supported by a more detailed annual business plan for the building functions.

## **Clause 19: Annual report about information provided under mandatory reporting requirements**

### **Effect**

211 The new regulatory regime will require dutyholders to report certain information to the Building Safety Regulator on safety occurrences within higher-risk buildings as part of a mandatory occurrence reporting regime.

212 Clause 19 requires the Building Safety Regulator to publish aggregated information it has

received from dutyholders through mandatory occurrence reporting requirements on an annual basis. The clause makes clear that information contained within the annual report must not contain any personal data.

### **Background**

213 This is a new provision.

214 Recommendation 1.4 of the Independent Review makes clear that the outputs of mandatory reports (and statistical analysis of this data) should be publicly available. This clause ensures that this information is made publicly available.

#### **Example: Information published as part of an annual report**

Information published as part of an annual report could include data on the number of reports received, the distribution of occurrences across different types of buildings, the prevalence of individual categories of occurrence, and interventions made by both dutyholders and the Building Safety Regulator to remediate hazards.

### **Clause 20: Statement of regulator's engagement with residents etc**

#### **Effect**

215 Clause 20 requires the Building Safety Regulator to produce a statement at least annually about how it has engaged with residents of higher-risk buildings and related groups about the work of the Building Safety Regulator. This statement must cover engagement with:

- the residents' panel (clause 11);
- residents of higher-risk buildings;
- owners of residential units (e.g. flats) in higher-risk buildings who are not occupying the property; and
- organisations that represent, support or promote the interests of residents or owners.

216 The Building Safety Regulator may publish this statement within the Health and Safety Executive's annual report, as required under paragraph 10(3) of Schedule 2 to the Health and Safety at Work etc. Act 1974. The Regulator could also publish the statement elsewhere.

### **Background**

217 This is a new provision.

#### **Example**

The Building Safety Regulator may consult with the residents' panel and (on its advice) set up focus groups with a range of residents from across England to ensure that its advice to residents of higher-risk buildings is helpful to residents with different needs and vulnerabilities. The Building Safety Regulator can include this engagement in the statement. Transparency about this work would help build public confidence that the new regulatory regime has prioritised the

safety of residents.

## Enforcement

### Clause 21: Authorised officers

#### **Effect**

- 218 Clause 21 allows the Building Safety Regulator to authorise individuals so that they can exercise specified powers in relation to ‘relevant building functions’ on behalf of the Building Safety Regulator. Authorisation can only be given where the person is considered by the Building Safety Regulator to be qualified to exercise the power. The Building Safety Regulator will provide the person with written proof of this authorisation, which they will be required to produce if asked.
- 219 ‘Relevant building functions’ are all of the Building Safety Regulator’s enforcement-related functions, including building control functions under the Building Act 1984 and the function of enforcing the new occupation regime set out in Part 4 of this Bill. This excludes the Building Safety Regulator’s general functions that do not have an enforcement element.
- 220 The powers available to authorised officers are found in Schedule 2 of this Bill.

#### **Background**

- 221 The power set out in this clause is designed to enable the effective functioning of the Building Safety Regulator’s functions in respect of higher-risk buildings. The Independent Review found that the regulation of higher-risk buildings could be improved by bringing together Health and Safety Executive expertise, local authority building control expertise (and where appropriate, expertise from the private sector) and fire safety expertise from fire and rescue authorities. Clause 13 enables the Building Safety Regulator to secure the involvement of local authorities and fire and rescue authorities in its work on a higher-risk building.
- 222 In this framework, appropriately trained members of the Building Safety Regulator’s team will require powers to carry out functions on the Building Safety Regulator’s behalf. This is what this provision does.
- 223 The Building Safety Regulator will have discretion in designating different individuals to exercise different sets of powers, as some will have more competence and expertise than others. This will allow the Building Safety Regulator to assign the relevant powers to those persons who are qualified and equipped to exercise them.

#### **Example**

The Building Safety Regulator sets up a “multi-disciplinary team” to regulate the construction of a higher-risk building. The Building Safety Regulator requests assistance with building control matters from the local authority, which provides an appropriately trained building control expert to assist the Building Safety Regulator. The building control expert is designated with Building Safety Regulator powers to enter non-domestic premises without a warrant and to require information, documents etc. (powers under paragraphs 1 and 4 of

Schedule 2). However, the Building Safety Regulator decides not to designate this individual with powers to obtain a warrant to enter premises (powers under paragraphs 2 and 3 of Schedule 2), as the individual has not been trained to draft and swear to an information for a justice of the peace.

This building control expert, now designated as an authorised officer of the Building Safety Regulator, visits a building site to inspect the construction of the higher-risk building and ensure it complies with building regulations and with the plans and specifications submitted at Gateway 2. In accordance with subsection (4), if the site manager asks to see the authorised officer's authorisation document, the authorised officer must produce it (or a duly authenticated copy).

## Clause 22: Authorised officers: offences

### **Effect**

- 224 Clause 22 sets out the criminal offences of obstructing and impersonating authorised officers of the Building Safety Regulator. These offences are designed to protect the effective functioning and decision-making of the Building Safety Regulator by ensuring individuals do not impede the Building Safety Regulator's operations.
- 225 Each of the offences has a different penalty to reflect the respective gravity of the offence.
- 226 The offences of obstructing and impersonating an authorised officer will be triable only in the magistrates' court, with a maximum fine for obstruction of level 3 on the standard scale (currently £1000) (mirroring the offence of obstructing a police officer in section 89(2) of the Police Act 1996), while impersonation will carry an unlimited fine (mirroring the offence of impersonating a police officer in section 90(1) of the Police Act 1996).

### **Background**

- 227 This clause mirrors similar provisions supporting staff of other regulatory bodies such as the Food Standards Agency, Financial Conduct Authority and the Health and Safety Executive. These offences aim to protect staff of the Building Safety Regulator or those working on the Building Safety Regulator's behalf, as well as residents and those subject to the regulator's jurisdiction.
- 228 This is because obstruction could potentially disrupt or sabotage the operations of the Building Safety Regulator, which could adversely impact the safety of individuals in the building. In addition, those seeking unauthorised entry to dwellings could impersonate staff of the Building Safety Regulator to assist them in doing so.

#### **Example 1: Site obstruction**

The Building Safety Regulator has agreed an inspection plan for the construction of a higher-risk building with the relevant building owner and main contractors. When the officer arrives on the site, they find that they are obstructed from entering the building. The individual carrying out that obstruction can be prosecuted under this section.

#### **Example 2: Impersonation**

A person impersonates an authorised officer and contacts a building owner to obtain confidential information with intent to deceive, such as personal or financial details and resident information, for criminal purposes. This will engage the criminal offence and the person can be prosecuted.

## Clause 23: Provision of false or misleading information to the regulator

### **Effect**

- 229 Clause 23 sets out the criminal offence of providing false or misleading information, in the circumstances described in subsection (1)(a)-(c), to the Building Safety Regulator. As with the previous clause, this offence is designed to protect the effective functioning and decision-making of the Building Safety Regulator.
- 230 The clause sets out that providing false or misleading information is triable in either a magistrates' or the Crown court; the broad range of sentencing outcomes gives the courts options to address the different degrees of culpability possible with an offence where the mental element includes both intent and recklessness and the offence covers both false and misleading information. A person deliberately providing false information is quite different from a person recklessly providing misleading information, so the sentencing options available need to be equally disparate. If tried in a magistrates' court, the offence will carry a maximum penalty of an unlimited fine and/or the maximum term of imprisonment permitted in a magistrates' court as defined in clause 29(1), i.e. 12 months (six months until the commencement of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020). If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years' imprisonment.

### **Background**

- 231 Clause 23, as with clause 22, mirrors similar provisions supporting staff of other regulatory bodies with the aim of protecting the staff of the Building Safety Regulator or those working on the Building Safety Regulator's behalf. The offence exists primarily to deter the provision of false information, which could disrupt or sabotage the operations of the Building Safety Regulator, which in turn could adversely impact the safety of individuals in the building.

### **Example: False claim of a building safety risk assessment**

In an application to the Building Safety Regulator for a Building Assessment Certificate, an Accountable Person falsely claims that a building safety risk assessment under clause 83 has been carried out. Upon discovering that the assessment has not been carried out, the Building Safety Regulator will have a range of options, including issuing a compliance notice under clause 99, but would also be able to take criminal proceedings against the Accountable Person under this clause.

## Reviews and appeals

### Clause 24: Review by regulator of certain decisions made by it

#### **Effect**

- 232 Clause 24 enables persons directly impacted by the Building Safety Regulator’s decisions to request a review of such decisions. Secondary legislation will set out the category of decisions that will be reviewable under this provision, the persons who can apply for review, and will detail the administrative requirements (for example form, period for submission) of such requests.
- 233 The Building Safety Regulator will assess the request against the circumstances to determine the extent of the review and how the review will take place.
- 234 Once the Building Safety Regulator comes to a decision to either uphold or vary the decision, it must notify the person in writing within the period specified in regulations or another agreed period.
- 235 This clause will operate in conjunction with clause 25. If the person is not content with the decision reached by the Building Safety Regulator’s review, they may appeal this decision to the First-tier Tribunal, within a prescribed period after the conclusion of the review.
- 236 The option to appeal to the First-tier Tribunal will not be available in the first instance, only after internal review by the Building Safety Regulator.

### **Background**

- 237 This clause is intended for certain types of regulatory decisions, such as refusal of Gateway applications. This does not include enforcement decisions, which will be appealable directly to the Tribunal.
- 238 This legislation will give the Building Safety Regulator powers to undertake building control functions for higher-risk buildings as well as powers to oversee the performance of other building control bodies in England. The Building Safety Regulator will thus have the power to take individual regulatory decisions.
- 239 As such, this provision intends to allow interested persons to make a direct request to the Building Safety Regulator for a review of its decision before appealing to the First-tier Tribunal. This aligns with existing guidance that parties may achieve quicker resolution if alternative dispute resolution procedures are adopted.

### **Example**

Where the relevant dutyholders have submitted a full Gateway two application, with all of its constituent parts, the Building Safety Regulator finds some of these documents to be non-compliant and therefore does not approve the application to enable construction to begin. The developer lodges an internal review against the Building Safety Regulator’s decision within the period prescribed. The Building Safety Regulator decides the most appropriate form of review and how comprehensive the review will be. If the developer is not content with the final decision of the Building Safety Regulator, they can appeal that decision to the First-tier Tribunal.

## **Clause 25: Right of appeal: requirement for review before appeal**

### **Effect**

- 240 Clause 25 specifies that where a decision by the Building Safety Regulator may be reviewed under clause 24, it must first be lodged with the Building Safety Regulator’s internal review procedure and concluded before being appealed to the First-tier Tribunal.

- 241 Where a decision has been reviewed by the Building Safety Regulator and is varied, the right of appeal will apply to the varied decision and not the original decision made by the Building Safety Regulator.
- 242 Where an appeal is lodged in the First-tier Tribunal, this appeal will be in respect of the decision taken by the Building Safety Regulator at the end of the review and will take into account the representations made during the review.

### **Background**

- 243 This clause is designed to operate in conjunction with clause 24.

#### **Example**

The example provided for clause 24 is also applicable here.

## **Supplementary and general**

### **Clause 26 (and Schedule 3): Cooperation and information sharing**

#### **Effect**

- 244 Clause 26 introduces Schedule 3, which creates the power for reciprocal information sharing between the Building Safety Regulator and other persons in connection with certain statutory functions. Schedule 3 also creates legal duties for the Building Safety Regulator and specified bodies to cooperate in connection with certain statutory functions. Clause 26 makes clear that information sharing gateways created by Schedule 3 over-ride duties of confidence, but do not over-ride data protection requirements.
- 245 Schedule 3 paragraph 2 creates new duties to cooperate between the Building Safety Regulator and local authorities, the Building Safety Regulator and fire and rescue authorities, and the Building Safety Regulator and FSO authorised persons, which apply in respect of certain statutory functions. The Building Safety Regulator is expected to work particularly closely with these bodies, and clauses 13 and 14 specifically provide for these bodies to be able to support the Building Safety Regulator in undertaking certain of its functions.
- 246 Paragraph 2 also enables ‘relevant persons’ (the Building Safety Regulator, local authorities, fire and rescue authorities and FSO authorised persons) to share information with one another in respect of certain statutory functions. The ability to share information is necessary to enable these bodies to cooperate effectively and to deliver their statutory functions in respect of buildings, for example when working together to deliver the Building Safety Regulator’s functions in respect of a higher-risk building.
- 247 Paragraph 2 enables the Secretary of State, through statutory instrument, to add to the list of ‘relevant functions’ of local authorities and fire and rescue authorities to which these provisions apply. This reflects that there are a particularly wide range of potential operational interactions between the Building Safety Regulator (notably in relation to its responsibility for regulating higher-risk buildings), local authorities and the fire and rescue authorities. The Government does not believe that it can foresee all the functions where operational experience will demonstrate that cooperation and information sharing between the Building Safety Regulator and the other authorities would support effective delivery of those agencies’ statutory functions.

248 Schedule 3, paragraph 3 creates duties to cooperate and powers to share information between the Building Safety Regulator and ombudsmen. This is intended to ensure that:

- complaints raised with the wrong organisation initially are promptly and effectively redirected to the right place;
- there is effective joint working where there are several different aspects to a single complaint;
- there is appropriate and timely information sharing to support the delivery of each other's functions; and
- the organisations work together in other areas of joint interest such as the production of joint guidance to help residents understand their respective roles and responsibilities.

249 Schedule 3 paragraph 4 enables the Building Safety Regulator and the Secretary of State to share information.

250 Schedule 3 paragraph 5 allows the Building Safety Regulator to share information with the police. The police may use this information only for specified purposes around the prevention, detection, investigation or prosecution of an offence, to support police functions relating to public health or public safety, or in support of national security.

251 Schedule 3 paragraph 6 is comprised of two delegated powers. The first (at paragraph 6(1)), relates to duties to cooperate, and enables the Secretary of State to create new duties to cooperate between the Building Safety Regulator and any public authority. The duty to cooperate would apply to building functions of the regulator and any prescribed function of the public authority. As the Building Safety Regulator's functions relate to England only, the duty to cooperate would only extend to functions of the public authority in England.

252 The second (at paragraph 6(2)) relates to the disclosure of information and enables the Secretary of State to authorise relevant persons (the Building Safety Regulator, local authorities, fire and rescue authorities and FSO authorised persons) to reciprocally share information with another public authority for specified functions in England, with that public authority and the functions covered to be set out in regulations.

253 The purpose of these powers is to enable the Secretary of State, where circumstances require it, to create new duties to cooperate and new information sharing gateways, to ensure that the functions of the various public authorities involved can be discharged effectively. Two circumstances which could justify the use of these powers are:

- If evidence necessitated a change to the scope of the higher-risk regime, such that it is essential that the Building Safety Regulator cooperates with further regulators with overlapping (or otherwise relevant) responsibilities for those buildings.
- If further ombudsman or redress schemes are set up, in addition to those listed in paragraph 3(5) to Schedule 3, where it is important that the Building Safety Regulator and the ombudsman cooperate and are able to share information.

254 The second (at paragraph 6(2)) relates to the disclosure of information and enables the Secretary of State to authorise relevant persons (the Building Safety Regulator, local authorities, fire and rescue

authorities and FSO authorised persons) to reciprocally share information with another public authority for specified functions, with that public authority and the functions covered to be set out in regulations.

255 The purpose of this delegated power enables the Secretary of State to create information sharing pathways for relevant persons and any other prescribed public authority to support the effective delivery of their respective functions. Two circumstances which could justify the use of this power are:

- If evidence necessitated a change to the scope of the higher-risk regime, such that it is essential that the Building Safety Regulator cooperates and shares information with further regulators with overlapping (or otherwise relevant) responsibilities for those buildings.
- If further ombudsman or redress schemes are set up, in addition to those listed in paragraph 3(5) to Schedule 3, where it is important that the Building Safety Regulator and the ombudsman cooperate and are able to share information.

### **Background**

256 Clause 26 and Schedule 3 are new provisions.

257 The duties to cooperate and powers to share information set out in clause 26 and Schedule 3 are designed to foster a culture of joint working between the Building Safety Regulator and other regulators and enforcement bodies operating in the same regulatory landscape (with functions relevant to building standards and safety), to support one another to discharge their statutory functions effectively.

258 Schedule 3 paragraph 4 is specifically designed to make it easier for residents to have their safety concerns addressed effectively and help improve complaints handling for residents of all tenures by making sure that complaints quickly get to the right organisation for consideration and action.

#### **Example 1: Local authorities and the Building Safety Regulator**

During the course of a local authority environmental health team's inspection, the team identify a building safety risk in connection with a higher-risk building. Relying on the duty to cooperate and the power to share information, the local authority shares information about the risk with the Building Safety Regulator, and they work together to ensure appropriate action is taken to manage and mitigate the risk identified, using whichever organisation's expertise and powers are best suited to resolving the issue.

#### **Example 2: Fire and rescue authorities and the Building Safety Regulator**

A fire and rescue authority identifies a breach of the Regulatory Reform (Fire Safety Order) 2005, which indicates the potential for a similar breach in the new regulatory regime in relation to occupation of a higher-risk building. Relying on the duty to cooperate and the power to share information, the fire and rescue authority shares information about the issue with the Building Safety Regulator and the two organisations work together to ensure appropriate action is taken to

deal with the breach and mitigate any risk to safety, using whichever organisation's expertise and powers are best suited to resolving this issue.

### Example 3: Ombudsman and the Building Safety Regulator

A resident of a higher-risk building in the social sector has an urgent safety concern about a faulty fire alarm system that their Accountable Person has not resolved. They do not realise that this should be escalated to the Building Safety Regulator for consideration and investigation and send the complaint to an Ombudsman by accident. The duty of cooperation is designed to make sure that in such a case the ombudsman on receipt will quickly redirect the complaint and the supporting information to the Building Safety Regulator for consideration and work together with them if there are other aspects to the complaint that are appropriate for the Ombudsman to consider.

## Clause 27: Fees and charges

### **Effect**

259 This clause allows the Secretary of State to make regulations allowing the Building Safety Regulator to charge fees and recover charges in relation to its functions under Part 2 of the Bill, its functions under Part 4 of the Bill (in relation to the new regulatory regime for higher-risk buildings in occupation), and its functions under the Health and Safety At Work etc Act 1974. Subsection (5) enables the Secretary of State to approve commercial charging by the Building Safety Regulator.

### **Background**

260 This is a new provision.

261 The Independent Review recommended that the regulator for higher-risk buildings be funded through a full cost recovery approach. It is appropriate that regulations can make provisions for fees to be charged for Building Safety Regulator activities to support this policy objective in respect of higher-risk buildings, and for fees to be charged where appropriate for other functions.

262 This provision should be read alongside clause 56, which enables the Secretary of State to make regulations enabling the Building Safety Regulator (and other public authorities) to charge for their functions under the Building Act 1984 and regulations made under it.

### Example

It is expected that regulations would be made under this power to set out fees to be charged to Accountable Persons or other dutyholders for costs incurred regulating against the new more stringent regime for higher-risk buildings in occupation. The fees regulations could provide details of when a fee or charge is payable, by whom, what it is payable for, what triggers the charge, and to set applicable hourly rates and application fees, including potentially different hourly rates for the work of different types of inspector or expert.

Subsection (5) is intended to be used where the Building Safety Regulator shares expertise with international partners and will be used only with the consent of

the Secretary of State and in line with Government guidance on charging.

## Clause 28: Service of documents

### Effect

263 This clause makes provision for the service of documents (whether physical or electronic) in respect of Parts 2 and 4 of the Bill and regulations made under them; service of documents in respect of the Building Act 1984, as amended by Part 3 of the Bill, is dealt with in section 94 of that Act (which is itself amended by Schedule 5 to this Bill to modernise the provision and take account of the regulator's role as a building control authority).

### Background

264 This clause makes provision that is essentially the same as section 94 of the Building Act 1984, updated to reflect technological developments related to the electronic service of documents.

## Clause 29: Interpretation of Part 2

### Effect

265 Clause 29 provides key definitions used in Part 2 of the Bill.

# PART 3: Building Act 1984

## Building control authorities and building regulations

### Clause 30: Higher risk buildings etc

### Effect

266 The new regulatory regime will regulate 'higher-risk buildings'. Clause 30 inserts sections 120D to 120I into the Building Act 1984. Section 120D defines the 'higher-risk buildings', which will be regulated during the design, construction and refurbishments phases of a building's lifecycle by the new regime in England, as at least 18 metres in height or at least 7 storeys and of a description specified in regulations.

267 Section 120D gives the Secretary of State the powers, by regulations to define which descriptions of buildings are 'higher-risk buildings' (subsection (2)(b)) and which descriptions of buildings are excluded from the definition of 'higher-risk building' (powers used in the way described by (4)(c)). Regulations made under these powers are subject to the affirmative resolution procedure, i.e. they must be laid in draft, debated and approved in both Houses of Parliament before they can be made.

268 Section 120D, at subsection (3), also gives the Secretary of State the power, by regulations, to supplement the definition for example, by defining 'building' or 'storey' or describing how the height of a building should be measured. Subsection (5) provides that the definition of 'building' in regulations may include other structures, erections or movable objects. The ability to have a broad definition aligns with section 121 of the Building Act 1984. Regulations made under this power are subject to the negative resolution procedure.

269 Section 120D gives the Secretary of State the power to amend section 120D apart from subsections

(1), (3) and (6). This power could be used, for example, to amend the height criteria for the definition of 'higher-risk building'. Regulations made under this power are subject to the affirmative resolution procedure, i.e. they must be laid in draft, debated and approved in both Houses of Parliament, before they can be made.

- 270 When making regulations to amend the definition of 'higher-risk building', this can be done by reference to a building's size, design, use, purpose or other characteristic (section 120A of the Building Act 1984, inserted by paragraph 77 of Schedule 5 to this Bill).
- 271 Section 120E stipulates that the Secretary of State must consult the Building Safety Regulator and any other appropriate persons before making regulations under section 120D. The Secretary of State does not need to consult the Building Safety Regulator if they have received a recommendation or requested advice from the Regulator.
- 272 Section 120F further stipulates that when the Secretary of State proposes to make regulations which would result in a description of building being added to the definition of 'higher-risk building', and therefore subject to the new design and construction regulatory regime for higher-risk buildings, they must have received a recommendation from the Regulator to that effect, or asked the regulator for advice, and they must undertake and publish a cost benefit analysis. If the costs or benefits cannot be reasonably or practicably estimated, then the Secretary of State must provide an explanation of this.
- 273 Section 120H sets out what the Regulator must do if the Secretary of State asks it for advice about the definition of 'higher-risk building'. The Building Safety Regulator is obliged to provide such advice on request.
- 274 If the Building Safety Regulator is asked to provide advice on whether a new description of building should be added to the definition of 'higher-risk building', it must consider whether the conditions at subsection (2) (a) - (c) of the clause are met. The conditions are: the Building Safety Regulator must be of the view that building safety risks in the type of building in question are higher than in buildings in general, that if the prescribed building safety risks arose in the type of building in question it could cause a major incident (serious injury or death to a significant number of people) and that the Regulator considers it appropriate for the regulatory regime to apply.
- 275 If the Building Safety Regulator considers the conditions are met, it must recommend to the Secretary of State that the new description of building is added to the definition of 'higher-risk building' and provide a statement of the issues it considered alongside the recommendation.
- 276 If the Building Safety Regulator considered the conditions are not met, they must provide advice that the new description of building should not be added to the definition of 'higher-risk building' and provide a statement of the issues it considered.
- 277 Section 120H also sets out that the Building Safety Regulator must provide advice as to whether a description of building should be removed from the definition of 'higher-risk building', if the Secretary of State requests it.
- 278 Section 120G provides that the Building Safety Regulator must recommend to the Secretary of State that a particular description of building should be subject to regulation under the regime if the conditions at subsection (1) (a) - (c) of the clause are met. These are the same conditions as specified in section 120H. In making such a recommendation under section 120G, the Building Safety Regulator must provide the Secretary of State with a statement of the issues considered.
- 279 Under section 120G (4), the Building Safety Regulator may also recommend the removal of a

description of higher-risk building from the regulatory regime.

280 If the Secretary of State chooses not to follow a recommendation of the Building Safety Regulator, then sections 120G and 120H specify that they must publish a document which sets out the regulator's recommendation, the Secretary of State's decision not to follow the recommendation, and the reasons for that decision.

### **Effect in Wales**

281 Section 120I defines 'higher-risk building' in Wales and 'higher-risk building work' which includes circumstances where work causes a building to become a higher-risk building or to cease to be a higher-risk building.

### **Proposed use of power**

282 At the start of the new regulatory regime, it is proposed to supplement the definition of 'higher-risk building' for England as laid out in the draft Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations which can be found at <https://www.gov.uk/government/collections/building-safety-bill>.

### **Background**

283 This is a new provision.

284 The Independent Review identified that it is important to ensure that the Government can respond quickly in the future, where necessary, to amend the definition of 'higher-risk building' in light of either critical new information emerging or experience of operating the new regime.

285 Following pre-legislative scrutiny, the Housing, Communities and Local Government Committee recommended including the definition of 'higher-risk building' within the Bill, rather than in regulations.

### **Example**

The following example is purely hypothetical.

After the new design and construction regime has been operating for two years, the Secretary of State may decide that consideration is needed as to whether single storey premises in areas of high flood risk should be higher-risk buildings because of a concern about structural failure following recent flooding incidents.

If the Secretary of State came to this view, they must request advice from the Building Safety Regulator. The Building Safety Regulator must consider whether single storey premises in areas of high flood risk meet the three conditions specified in this section 120H(2).

In this hypothetical example, the Regulator considers the conditions are met. The Regulator must then make a recommendation to the Secretary of State to amend the definition of a 'higher-risk building' and provide a statement of the issues it considered in coming to that recommendation.

Having considered the recommendation, the Secretary of State may be minded to agree and make regulations to amend the definition of 'higher-risk buildings'. They must then consult other appropriate persons and undertake a cost benefit

analysis, if they have not already done so whilst requesting advice from the Regulator. Having considered the recommendation, the representations made and the cost benefit analysis, the Secretary of State will decide whether to amend the definition of ‘higher-risk building’.

If the Secretary of State chooses to make the amendment, the regulations will be laid in Parliament using the affirmative procedure. If the Secretary of State chooses not to make the amendment, then the Secretary of State must publish a document setting out the Regulator’s recommendation, their decision not to implement it and the reasons for their decision.

## Clause 31: Building control authorities

### **Effect**

- 286 Clause 31 amends section 91 of, and inserts new sections 91ZA, 91ZB, 91ZC and 121A into, the Building Act 1984 to set out, for England, the arrangements where the Building Safety Regulator is the building control authority, and to define higher risk building work (see below as to Wales).
- 287 The amendments to section 91 for England make clear that for buildings or building work where the Building Safety Regulator is the building control authority, the local authority is no longer responsible for acting as the building control authority for enforcing the requirements of building regulations in respect of those buildings or that building work.
- 288 Section 91ZA(1) provides that, in England, the Building Safety Regulator is the building control authority for work on higher-risk buildings, or for work on buildings which are to be higher-risk buildings, (higher-risk building work). Therefore, it is responsible for supervising building work and enforcing compliance with building regulations’ requirements for those buildings.
- 289 Section 91ZA(2) provides that, in England, the Building Safety Regulator is the building control authority in situations where a non-higher risk building becomes one as a result of building work being undertaken, or where a higher-risk building ceases to be one as a result of building work. Section 91ZA(3) defines (for England) building work for which the Building Safety Regulator is the building control authority as higher-risk building work.
- 290 Section 91ZB enables, in England, the person undertaking the work to issue a notice to the relevant local authority in agreement with the Building Safety Regulator, so that the Building Safety Regulator is the building control authority for building work on a non-higher risk building (called a ‘regulator’s notice’). A regulator’s notice can only be issued provided that neither a building control application has already been made to a local authority nor an initial notice nor a public body’s notice has already been issued (subsection (3)).
- 291 Section 91ZC makes supplemental provision to Section 91ZB. In particular, subsections (2) – (4) provide that regulators’ notices can be rejected only on grounds prescribed in building regulations; that a notice of rejection must be issued within a prescribed period, otherwise the regulator’s notice is treated as being accepted; and that rejection of a regulator’s notice may be appealed. Subsection (5) allows for building regulations to prescribe the form and content of a regulator’s notice and the way in which it is to be issued.
- 292 The clause also inserts new section 121A(1) into the Building Act 1984 to make clear that, in England, the Building Safety Regulator is the building control authority where sections 91ZA and 91ZB provide for this to be the case, otherwise the building control authority will be a local

authority. The definition of a building control authority being either the Building Safety Regulator or a local authority is the definition used for all of the new references to ‘building control authority’ being inserted into the Building Act 1984.

293 Schedule 5 makes consequential amendments to the Building Act 1984.

### **Effect in Wales**

294 Clause 31 also applies to Wales and inserts new sections 91ZD and 121A into the Building Act 1984.

295 The insertion of section 91ZD for Wales provides a power for the Welsh Ministers, in building regulations, to designate an alternative local authority to act as building control authority where the local authority for the area proposes to carry out higher-risk building work. This is to avoid the risk of a conflict of interest where the local authority would otherwise be both developer and regulator on a higher-risk building.

296 New section 121A defines building control authorities and local authority for the purpose of the definition of building control authority in 121A(1), to confirm that the designated local authority is the building control authority for work in relation to which it has been designated.

### **Background**

297 Section 91 of the Building Act 1984 places a duty on the local authority to execute the Act and enforce building regulations’ requirements in its area.

298 In England, to avoid duplication of regulation, the Building Safety Regulator will be responsible for all building regulations matters when building work is undertaken on higher-risk buildings (not just fire and structural safety matters). Therefore, it will be the building control authority for all building work on higher-risk buildings, or for work which leads to a building becoming a higher-risk building, for instance through the addition of extra storeys to an existing building, or ceasing to be a higher-risk building with the removal of storeys from the building or change of use.

299 Also, there will be multi-building sites in England comprising both higher-risk buildings and non-higher-risk buildings. Although the Building Safety Regulator will automatically be the regulator for the higher-risk building, a local authority or registered building control approver would normally be the building control body for the non-higher risk building.

300 The developer may prefer to deal with one body for the whole site. Given that neither a local authority nor a registered building control approver can undertake building control for the higher-risk building, this would mean the developer would choose the Building Safety Regulator to be responsible for providing building control for the whole site.

301 The regulator’s notice provides the mechanism for doing this in England.

302 Section 91 of the Building Act 1984 applies equally to Wales.

303 In Wales the local authority for the area, or as designated by Welsh Ministers under building regulations, will be responsible for all building regulations matters when building work is undertaken on higher-risk buildings including similarly for work which leads to a building becoming or ceasing to be a higher-risk building.

304 For multi-building sites in Wales comprising both higher-risk buildings and non-higher-risk buildings although the developer may choose either a local authority or registered building control approver as the building control body for the non-higher risk building, the developer may

choose to utilise the designated local authority for the whole site.

### Example

If a developer (“the relevant person”) wishes the Building Safety Regulator to act as the building control authority for a multi-building site including both higher-risk buildings and non-higher risk buildings, they can seek the Building Safety Regulator’s agreement to issuing, jointly, a regulator’s notice. The Building Safety Regulator has to agree to undertake the building control function for non-higher risk buildings. If they do not, building control would be the responsibility of the local authority or a registered building control approver. A regulator’s notice can be issued only for sites where there is a higher-risk building and where work involves work on the higher-risk building.

It is envisaged that the local authority would have very limited grounds for rejecting a regulator’s notice on procedural grounds (for instance incorrect information has been supplied) and this would need to be done within a period prescribed in regulations.

Where the Building Safety Regulator is acting as the building control authority for a non-higher risk building, it will operate the same building control functions for the non-higher risk building as would a local authority where plans have been deposited.

Once work on a non-higher risk building has completed, the Building Safety Regulator will issue a completion certificate as provided for under building regulations. The regulator’s notice still has effect in respect of that work, i.e. a local authority cannot take enforcement action in respect of that work at a later date. A new regulator’s notice will be needed for any future building work on the non-higher risk building, or, alternatively, it would be open for the person undertaking the work to use the local authority or a registered building control approver for building control.

## Clause 32: Building regulations

### **Effect**

305 Clause 32 inserts new provisions into Schedule 1 to the Building Act 1984 to provide powers for building regulations to set:

- procedural requirements relating to building control and the issue of notices and certificates (new paragraph 1A);
- procedures relating to applications for building control approval, and for requirements to be imposed on approvals (new paragraph 1B);
- approval of schemes whose members can issue certificates, and provision about those certificates and schemes including insurance (new paragraph 1C);

- requirements on giving, obtaining or keeping of information or documents (new paragraph 1D);
- requirements for the establishing of a system relating to mandatory occurrence reporting (new paragraph 1E);
- the form and content of documents and information to be provided with building control applications (new paragraph 1F);
- inspection and testing (new paragraph 1G);
- powers for building control authorities to extend prescribed timescales for deciding applications with the agreement of the applicant (new paragraph 1H); and
- rights to appeal decisions, appeal requirements and procedures (1I).

306 The Building Safety Regulator will be the building control authority for higher-risk buildings and buildings covered by a regulator's notice in England (see clause 32), new sections 91ZA and 91ZB), and local authorities will be the building control authority for other buildings; in some cases the building control authority in Wales will be a designated local authority, rather than the local authority for the area in question (see clause 32, new section 91ZD).

307 The new regulatory regime will introduce procedures and requirements for new higher-risk buildings as they are designed and built, and for building work carried out on them. Proposals for new higher-risk buildings will go through a gateway process, and proposals for building work on existing higher-risk buildings will go through a refurbishment process, each of which will be laid out in building regulations.

308 Procedures similar to the current building control routes will continue to be available for buildings not in scope of the more stringent regime where a local authority is the building control authority, namely deposit of plans or issue of a building notice. Procedures for these are currently set out in Part 3 of the Building Regulations 2010 as amended. Clause 32 will provide the powers to make changes to these existing requirements, including the information to be provided, consultation with fire and rescue authorities and sewerage undertakers, building control approvals, including with requirements, notification of when stages of work commence, and issue of completion certificates when work has completed.

309 Schedule 5 makes consequential repeals and amendments to relevant provisions in the Building Act 1984.

### **Effect in Wales**

310 Clause 32 will apply equally in Wales with the exception that rights of appeal are to the Welsh Ministers or a magistrates' court or in some cases to the High Court.

### **Proposed use of powers**

311 New paragraph 1A provides that building regulations may make provision about requirements for applications to building control authorities; the giving of notices and certificates; consultation arrangements; for building control authorities to be notified of specified matters; when applications can be deemed to be accepted or refused; and the effect of grants of applications and of certificates.

312 Regulations under paragraph 1B will make provision for prescribed documents to be submitted

with an application for building control approval, and also provide building control authorities with the ability to set requirements when granting applications for building control approval, such as requiring the submission of revised versions of documents, setting out that work cannot proceed beyond a certain stage without further approvals, and requiring applications for the approval of changes which occur during construction. Building control applications for refurbishment of higher-risk buildings will require plans and prescribed documents proportionate to the proposed refurbishment. Paragraph 1B(5) enables building regulations to set out the requirements for building control applications for the refurbishment of higher-risk buildings in England. Building control authorities will have the ability to request further information and refuse applications where the applicant fails to provide these. Taken together, the powers in paragraphs 1A and 1B will be used to set out in building regulations the procedures for gateways and refurbishment routes for building control approval in higher-risk buildings including the prescribed documents to be submitted with an application, staged approvals, and change control requirements.

- 313 New paragraph 1C makes provision for building regulations to set out procedures for the approval of schemes for persons who can provide certificates as evidence that work complies with building regulations requirements; the suspension or withdrawal of scheme approvals, the time periods for approvals; and arrangements for any prescribed insurance cover which members of schemes must hold, including that cover is provided by a scheme approved by the appropriate national authority (the Secretary of State in England and Welsh Ministers in Wales). For example, regulations might also set out the types of work for which certificates can be provided and the procedure for notifying building control authorities of work covered by certificates, as in the current Building Regulations. It is envisaged that a set of conditions of approval will be published which schemes must meet to be approved. These will be used as the basis for ongoing audit of schemes which will be necessary in order to maintain approvals.
- 314 New paragraph 1D will enable building regulations to set out the information and documents that must be obtained and kept, and the standards to which these documents and information must be stored and maintained. In England it is proposed to use this power to require those designing and constructing higher-risk buildings to develop a golden thread of information to prescribed standards. These prescribed standards are to ensure the information is accessible, accurate, up to date, transferable, secure and has longevity. For example, building information such as plans and prescribed documents submitted at Gateways two and three will need to be stored in the golden thread in a way that meets the prescribed standards. Regulations under this provision may give building control authorities or other prescribed persons the power to require documents and information to be shared with them in certain circumstances. Building regulations under this clause will define the prescribed circumstances where information must be shared and the prescribed persons it must be shared with in these circumstances.
- 315 Dutyholders will also be required to report information about safety incidents taking place during building work as part of mandatory occurrence reporting. The safety related incidents amounting to reportable occurrences will be prescribed in secondary legislation. Paragraph 1D gives the power to require reporting and the power to limit the admissibility of information acquired through such reporting in criminal proceedings, equivalent to the limitations set out in Clause 87(6). Paragraph 1E contains the power to require mandatory occurrence reporting frameworks to be established and operated by dutyholders. Regulations will require establishment and operation of a framework, according to prescribed requirements, that will enable workers on-site to report potential occurrences. In England, Principal Designers and Principal Contractors will be required to use this information to report structural and fire safety occurrences which could cause a significant risk to life safety in higher-risk buildings to the Building Safety Regulator.

- 316 In England it is proposed to require prescribed documents such as a fire and emergency file and construction control plan with certain building control applications for higher-risk buildings using powers in paragraph 1B. Where building regulations provide that any document or information may or must be given, the powers in new paragraph 1F will be used to prescribe the form and content of such documents, the information and other documents that must accompany it, and the way that it is given. This ensures consistency and quality standards. It is linked to paragraph 1D which contains powers to require that the information and documents created and managed by dutyholders to support building safety must meet prescribed standards. Subparagraph (3) allows building regulations to specify that some documents must be given in accordance with a published direction; so, for example, building regulations might prescribe that Gateway two applications in England must be given to the Building Safety Regulator in accordance with a direction published by the Regulator; and the Building Safety Regulator might publish a direction saying that these applications should be submitted through an online portal. New paragraph 1F(4) gives the power to set out in building regulations the prescribed documents that must be submitted with certain prescribed applications. In England, the intention is that the prescribed applications will be certain applications for the refurbishment of higher-risk buildings. Further information or documents can be required by the building control authority. It also sets out that such applications can be refused if a prescribed document is not provided to the building control authority on request.
- 317 When checking work, building control authorities may need to undertake tests or take samples of building materials. It is proposed to use the powers in new paragraph 1G to make provision in building regulations relating to the testing and sampling of work or the building, prohibit the covering up of work within a prescribed time period after a specified event, and allow for the cutting into, laying open of the work or building, or for the pulling down of work in order to test or sample it. For example, in order to check compliance a building control authority may specify that foundations should not be covered over for a period of time, to enable the depth of the foundations to be checked; or may wish to check that cavity barriers have been installed properly before the external cladding is installed, and they are covered up.
- 318 Building regulations will set prescribed timescales within which building control authorities will need to determine applications for building control approval and other applications. There will be projects where it will not be possible to review all the documents and make a decision within the prescribed timescale. Paragraph 1H will allow provision to be made for the building control authority, with the agreement of the applicant, to extend the period within which the application must be determined. In England it is proposed to use this power to provide for prescribed timescales for the following applications: Gateway two, change control, Gateway three and refurbishment of higher-risk buildings.
- 319 New paragraph 1I will enable persons directly impacted by decisions of building control authorities under building regulations to appeal such decisions. For example, where the Building Safety Regulator refuses a building control application for a higher-risk building such as at Gateway two, change control, Gateway three and refurbishment, there will need to be a route of appeal.

## **Background**

- 320 The Independent Review made several recommendations for stringent new building control procedures to increase regulatory oversight of the design and construction of higher-risk buildings and of building work subsequently carried out on them. It identified the importance of persons responsible for building safety having access to accurate and up to date information and concluded that a 'golden thread' of good quality information would ensure effective building

safety management throughout a building's lifecycle.

- 321 It also recommended that dutyholders across the building's lifecycle be required to report safety concerns to the Building Safety Regulator as part of a mandatory occurrence reporting regime.
- 322 Section 16 of the Building Act 1984 sets out general provision for the deposit of plans of proposed building work with local authorities. Specific regulations on procedural matters are in Part 3 of the Building Regulations 2010. These provisions are considered to be insufficient to implement the tightened controls needed for higher-risk buildings and so new provisions will be made in regulations for gateways and refurbishment procedures using the powers provided in clause 32.
- 323 Building regulations currently also set requirements for notices to be given to local authorities.
- 324 Sections 16 and 17 of the Act allow the Secretary of State to approve persons who can issue a certificate that work complies with building regulations, and as a consequence have protection from formal enforcement action by the local authority (although no persons have been approved under this power).
- 325 Some lower risk building work can be certified as complying with relevant building regulations requirements if the person undertaking the work is a member of a competent person scheme, and a local authority can accept the certificate as evidence of compliance. Schemes are authorised by the Secretary of State and are listed in Schedule 3 of the Building Regulations 2010.

#### Example: Golden thread

An architect has designed a residential tower block that will be 25 metres high. The architect's plans for the building form part of the information that will be required by the Building Safety Regulator at gateway two. This information will therefore need to be stored in the golden thread and meet the golden thread standards

#### Example: Mandatory occurrence reporting

During the construction of a residential tower block, a worker identifies compatibility issues between the insulation and intumescent sealant being installed around copper piping on-site. In the event of a fire, the expanding sealant would deform the insulation and potentially compromise compartmentation. The incompatibility was not spotted during design or during standard internal reviews, and the two products have been installed together numerous times on-site. This presents a systemic and significant risk to life safety.

The worker reports this to the Principal Designer and Principal Contractor who immediately inform the Building Safety Regulator that a mandatory occurrence has been identified. The Principal Contractor and Principal Designer then ensure that a full report is submitted to the Building Safety Regulator as soon as is practicable and no later than ten days from the occurrence being identified.

Upon receiving the report, the Building Safety Regulator can use the intelligence within to identify any trends of similar such incidents across the sector and share this and other valuable lessons learned within the report with industry. In

this way the report enables the Building Safety Regulator to help professionals across the sector proactively identify and resolve similar issues on their own sites, mitigating previously unknown risks and improving best practices across the built environment. The Building Safety Regulator can also, at its own discretion, use such a report as a basis for further investigative or enforcement action.

## Clause 33: Dutyholders and general duties

### **Effect**

- 326 Clause 33 amends Schedule 1 to the Building Act 1984, by the addition of paragraph 5A, appointed persons, and paragraph 5B, general duties. The new regulatory regime will regulate and hold to account those participating in the design and construction of new buildings, and the refurbishment of existing buildings.
- 327 This clause creates a power in paragraph 5A to require appointments to be made in relation to any work under building regulations, to make provisions about the nature of the appointment (including the appointer, the appointee and the term of the appointment), and determine situations where an appointment is deemed to have been made.
- 328 This clause also creates a power in paragraph 5B to impose duties on relevant persons throughout the design and construction phase of a building project. These dutyholders include those commissioning or undertaking work as well as those appointed, controlling or managing the work.
- 329 The provisions in this clause will replace an existing power in paragraph 4B of Schedule 1 to the Building Act 1984, inserted by the Sustainable and Secure Buildings Act 2004, which provides powers for building regulations to make provision with regard to appointed persons, and paragraph 4B will be repealed as a consequence (see Schedule 5 consequential amendments).

### **Effect in Wales**

- 330 Clause 33 will apply equally in Wales. Welsh Ministers intend to set out in secondary legislation requirements for principal dutyholders.

### **Proposed use of this power**

- 331 The power provided by this clause, which is amending Schedule 1 to the Building Act 1984, will enable regulations to be made setting out the appointments required when building regulations apply, and the duties which will be imposed. This will include requirements for dutyholders to cooperate and share information and to ensure compliance with building regulations.
- 332 MHCLG proposes to lay out the definitions of those to be appointed and their duties in indicative draft regulations which can be found at <https://www.gov.uk/government/collections/building-safety-bill>.
- 333 In England, MHCLG intends to use the powers in paragraphs 5A and 5B to provide that the client can treat those persons appointed as a Principal Contractor or Principal Designer under the Construction (Design and Management) Regulations 2015 (CDM) as appointed for the purposes of the building regulations. In order to do this, it is proposed that the client should certify that the CDM person has the appropriate skills, knowledge, experience and behaviours to undertake the

equivalent role under the building regulations.

### **Background**

- 334 This is a new provision, which will amend Schedule 1 to the Building Act 1984. Schedule 1 sets out the provision that may be made in building regulations, including detailing what should be done by whom.
- 335 The Independent Review identified dutyholders (including the Client, and the Principal Designer and the Principal Contractor appointed under CDM 2015) who should be held accountable for building safety during the design and construction phase. CDM 2015 defines these dutyholders and imposes duties on them including appointing the right people for the work and having suitable arrangements to ensure the project is carried out in a way that secures health and safety.
- 336 Regulations made under this provision in England will ensure that when buildings are designed, constructed or refurbished, all dutyholders, including existing dutyholders identified in CDM 2015, will have formal responsibilities for compliance with building regulations.

### **Clause 34: Industry competence**

#### **Effect**

- 337 This clause amends the Building Act 1984, creating powers to prescribe in building regulations competence requirements relating to the Principal Designer and Principal Contractor (appointed persons), and any prescribed person. Building regulations may also impose duties on the person appointing the Principal Designer, Principal Contractor and any prescribed person to ensure that those they appoint meet the competence requirements. These requirements will apply to design or building work on all buildings.
- 338 The Principal Designer, Principal Contractor, designers and contractors can be an organisation or an individual. Sub-paragraph (2) makes clear that the competence requirements can apply to both organisations and individuals. For individuals, the competence requirements will relate to their skills, knowledge, experience and behaviours. For organisations, the competence requirements will relate to the organisational capability – the ability of an organisation to carry out its functions under the building regulations properly. This may include having appropriate management systems, processes and policies to carry out its functions, and having the capability to ensure that its staff have the appropriate skills, knowledge, experience and behaviours.
- 339 Where the Principal Designer or the Principal Contractor are organisations, subsection (3) enables building regulations to impose requirements on these organisations to ensure that the individuals leading or managing the work have the appropriate skills, knowledge, experience and behaviours to manage, on behalf of the organisation, their functions as the Principal Designer or the Principal Contractor.

#### **Effect in Wales**

- 340 Clause 34 will apply equally in Wales with the same expectations of skills, knowledge, experience and behaviours relevant to the work in question.

#### **Proposed use of this power**

- 341 The intention for this provision is to ensure that everyone doing design work or building work is competent to do their work in a way that is compliant with building regulations. For any design or building work on all buildings in England, it is intended that building regulations set out these duties:

- The Principal Designer and Principal Contractor (appointed persons) must have the appropriate skills, knowledge, experience and behaviours and, if they are an organisation, the organisational capability, to carry out their duties specified in building regulations in a way that is compliant with building regulations. They may not accept an appointment unless they fulfil these conditions.
- Anyone who participates in or manages the work must have the appropriate skills, knowledge, experience and behaviours, and if they are an organisation, the organisational capability to carry out work in a way that is compliant with building regulations. If a person does not have the appropriate skills, knowledge, experience and behaviours, they must be in the process of obtaining it, and must be appropriately supervised. The latter option is needed to cover individuals in training and apprentices etc.
- Anyone who appoints organisations or individuals to carry out design work or building work must take reasonable steps to ensure that those they appoint meet the competence requirements for their roles.
- For higher-risk buildings, the competence requirements for the Principal Designer, Principal Contractor, and those carrying out design or building work must be appropriate to the particular higher-risk building in question.

342 These duties will apply to any design or building work on all buildings in England, whether or not the work is higher-risk building work. This includes any design or building work carried out during occupation.

343 In England, Government intends to provide statutory guidance, in the form of an Approved Document, to support these requirements. In the first instance guidance will be issued for higher-risk buildings, with wider competence guidance to follow later. The guidance will provide examples of the skills, knowledge, experience and behaviours and organisational capability required to work on higher-risk buildings, in particular, for the Principal Designer and Principal Contractor. The guidance may make references to the competence standards being developed by British Standards Institution (BSI) for these roles. Over time, it is expected that the built environment industry will develop sector-specific competence frameworks, which could, if sufficiently rigorous, be recommended and adopted in statutory guidance. It is expected that the competence committee (see clause 10) will advise on this point.

### **Related provisions**

344 Clause 32 provides powers (in new paragraphs 1B and 1F of Schedule 1 to the Building Act 1984) for Building Regulations to prescribe documents to be supplied with building control applications in England. This will include as part of the Gateway two application, a signed declaration from the Client that they are content with the skills, knowledge, experience and behaviours of the Principal Designer and Principal Contractor, and the evidence of the Client's assessment process for the skills, knowledge, experience and behaviours of the Principal Designer and Principal Contractor.

### **Background**

345 Building regulations do not currently make any particular provision relating to competence of persons carrying out building work. Regulation 7(1)(b) provides that 'building work shall be carried out in a workmanlike manner', but this is focused on the quality of the work rather than

the competence of the person doing it. Approved Document 7 provides some guidance on meeting the requirement in regulation 7(1)(b).

- 346 The Construction, Design and Management (CDM) Regulations 2015 include general duties in relation to the competence of designers (including Principal Designers) and contractors (including Principal Contractors). There are also duties on contractors to ensure the competence of those they appoint to work on construction sites. These duties focus on ensuring good management of health, safety and welfare when carrying out construction projects rather than on the safety and quality of buildings, and do not have specific provisions relating to higher-risk buildings.
- 347 The new provisions will impose general duties in relation to competence of persons carrying out any work on all buildings to ensure compliance with building regulations.

### Example

The Client intends to commission an eight-storey residential building and appoints a Principal Designer to lead on the design work. Prior to the appointment, the Client must assess that the nominated Principal Designer has the appropriate skills, knowledge, experience and behaviours and organisational capability to carry out their duties under building regulations in relation to the specific higher-risk building. In making this assessment, the Client considers statutory guidance which provides examples of the skills, knowledge, experience and behaviours and organisational capability required to work on higher-risk buildings.

The Client decides to appoint a company which demonstrates the organisational capability and ensures that the individual nominated by the company to manage its functions as the Principal Designer has the relevant skills, knowledge, experience and behaviours for the particular building, as explained in guidance. This may be demonstrated by, for example, being assessed by an accredited organisation as meeting the competence standards for the Principal Designer and having relevant experience working on the same type of buildings. The Principal Designer must also make sure that anyone they appoint to carry out design work is competent for their role.

Once the design stage is completed, the Client then procures for the construction of the building. Before appointing a Principal Contractor, the Client must assess that the nominated Principal Contractor has the appropriate skills, knowledge, experience, behaviours and organisational capability to carry out their duties under building regulations in relation to the specific building. Similarly, the Client considers statutory guidance and appoints a company which demonstrates the organisational capability, and ensures that the individual nominated by the company to manage its functions as the Principal Contractor has the relevant skills, knowledge, experience and behaviours for the particular building, and has met the competence standard for the Principal Contractor, as explained in guidance.

During construction, the Principal Contractor must make sure that anyone they

appoint to carry out building work is competent for their role or is being trained and appropriately supervised by a competent supervisor.

## Clause 35: Lapse of building control approval etc

### **Effect**

- 348 Clause 35 inserts a new section 32 into the Building Act 1984 which provides for building control approvals to lapse automatically after three years in respect of any buildings in which work has not commenced. New section 32(5) ensures that certain things which the person carrying out the work had to do when they made their original application, for instance to pay a fee or supply certain information, are not undone.
- 349 Clause 35 also inserts a new section 53A into the Act which makes provision for initial notices and plans certificates to lapse after three years. A new paragraph 4A is inserted into Schedule 4 to the Building Act 1984 to provide for a public body's notice and public body's plans certificate to lapse after three years.
- 350 Consequential amendments are made to the Building Act 1984, in particular section 47(4) is amended so that it is subject to new section 53A. Consequently, the provisions of section 53 relating to an initial notice ceasing to have effect do not apply if an initial notice lapses under section 53A.
- 351 Provision in new subsections 32(6), 53A(6) and paragraph 4A(6) inserted by clause 35 allows building regulations to define when work commences for the purposes of lapse of approval.

### **Effect in Wales**

- 352 Clause 35 will apply equally in Wales.

### **Background**

- 353 Section 32 of the Building Act 1984 currently provides a power for a local authority to issue a notice declaring that its approval of the plans for that work has no effect, if work has not commenced within three years of the plans being deposited.
- 354 Section 52(5) of the Building Act 1984 currently provides a power for a local authority to cancel an initial notice if work has not commenced within three years of the notice being issued, and section 50(8) provides a power for a local authority to rescind acceptance of a plans certificate if work has not started within three years of the certificate being issued. Similar provision is made for a public body's plans certificate in paragraph 2(6) of Schedule 4 to the Building Act 1984.

### **Example**

Building control approvals, initial notices, plans certificates, and public body's notices and plans certificates, will lapse automatically rather than requiring a local authority to take proactive action to declare that approval has no effect, or to cancel the notice. This is in line with the arrangements in planning legislation where planning permission lapses automatically after three years if work on the development has not started.

Also, if work has not started on an individual building on a multi building site within three years, the building control approval in respect of that building will

lapse, even if work on the remainder of the site has commenced.

## Clause 36: Determination of certain applications by Secretary of State or Welsh Ministers

### Effect

- 355 Clause 36 provides that where the building control authority fails to make a decision on a prescribed application for higher-risk buildings within prescribed timescales, and there is no agreement with the applicant to extend the timescale, applicants can apply to the appropriate national authority for a decision on the original application within a prescribed time period. The building control authority will not be able to continue determining the original application once an application has been made to the appropriate national authority for a decision in these cases. In England, the building control authority for higher-risk buildings will be the Building Safety Regulator and the appropriate national authority will be the Secretary of State (see below as regards Wales).
- 356 The appropriate national authority can appoint a person to determine these applications. Provisions will be made in building regulations for a person appointed to be able to determine the original application, including conferring functions on them and on the effect of their decisions. The appropriate national authority, and any appointed person, will have the powers of the building control authority to determine the original application with the Building Act 1984 and building regulations applying to them as they apply to the building control authority. They may for example impose requirements on approval of an application using powers under building regulations made under clause 32.
- 357 Subsection (5) provides powers to make provision about these applications in building regulations. General procedural matters with regard to these applications will be set out in building regulations, for example prescribing the categories of applications that can use this procedure, prescribing the time period within which these applications must be made, the procedures for making an application, for determining an application, and specifying the form and content of documents. Building regulations can also place requirements on applicants and impose duties on the building control authority in relation to these cases, such as requiring applicants to notify the building control authority when they submit an application to the appropriate national authority and requiring the building control authority to provide relevant documents to the appropriate national authority.
- 358 Applicants in England will be able to appeal decisions of the Secretary of State to the First-tier Tribunal.

### Effect in Wales

- 359 In Wales, failure by the building control authority (being the local authority for the area or one designated by Welsh Ministers) to decide an application for a higher risk building will allow an application to Welsh Ministers for a decision on the application.
- 360 Applicants in Wales will be able to appeal decisions of the Welsh Ministers to a magistrates' court.

### Proposed use of power

- 361 In England, it is intended to use the power in clause 36 to provide for the following applications to be determined by the Secretary of State, if the Building Safety Regulator does not take a decision in time: Gateway two, change control, Gateway three, and refurbishment of higher-risk buildings.

## **Background**

362 Currently developers can start building work when they have deposited plans and given the local authority notification of commencement or submitted a building notice. The new regime will require building control approval to be obtained before starting most kinds of building work on higher-risk buildings, and it will be an offence to undertake most higher-risk building work without first having building control approval. To minimise the risk of causing undue delays to construction, applicants will be able to apply to the appropriate national regulator for a decision in cases where the prescribed timescale for the building control authority to make a decision has passed with no extension agreed.

## **Clause 37: Compliance and stop notices**

### **Effect**

- 363 Subsection (1) of this clause enables the building control authority (i.e. the Building Safety Regulator or local authority) to issue compliance or stop notices where there is or is likely to be a contravention of building regulations by inserting new sections 35B to 35D into the 1984 Act.
- 364 A compliance notice (new section 35B) can be served on a person who is contravening, or is likely to contravene, building regulations or a requirement imposed under building regulations. This notice will require the person to remedy the contravention or to take the steps detailed in the notice within the specified period. This will be most useful in respect of non-safety related obligations outlined in building regulations, such as the provision of broadband.
- 365 Where work is being carried out that contravenes one or more particular provisions of building regulations that are specified in regulations for this purpose, where a compliance notice has not been complied with, or where work would present a risk of serious harm to people in or about the building if the building were used without the contravention being remedied, a stop notice (new section 35C) can be issued, to require a person to stop all work specified in the notice (which could be all work on that project). Once issued, it will take force immediately or from a date specified in the notice. The power to specify particular provisions of the building regulations is intended in England to enable the Building Safety Regulator to stop work immediately on sites where Gateway requirements have been breached. The Gateway requirements will be set out in building regulations made under new paragraphs 1A and 1B of Schedule 1 to the Building Act 1984, which are inserted by Clause 32 of this Bill, and relate only to higher-risk buildings.
- 366 In line with the existing enforcement protection in section 36(5) of the Building Act 1984, new section 35D(4) sets out that compliance notices and stop notices under section 35C(1)(a) cannot be issued where an application for building control approval in respect of non-higher risk building work has been granted by a building control authority and the contravention consists solely of carrying out the approved work etc. This protection does not apply to stop notices issued under new section 35C(1)(b) or (c). This is because, for subsection (1)(b), the protections would prevent a compliance notice being issued, so it could not be breached; and, for subsection (1)(c), the level of danger present (“the risk of serious harm condition”) means that the protections are inappropriate.
- 367 These notices will be appealable to the First-tier Tribunal in England and the magistrates’ court in Wales (subsection (2), inserting new section 39A into the Building Act 1984). Appeal of a compliance notice will suspend the effect of the notice itself. Given the increased seriousness of the issues justifying the issue of a stop notice, an appeal against such a notice will not suspend its effect (although an application may be made to the First-tier Tribunal or magistrates’ court for the effect of a stop notice to be suspended pending appeal).

368 If the person issued with a compliance or stop notice breaches the notice, the building control authority will be able to prosecute for the breach. The offence of breaching a notice will be triable either way, reflecting not only the contravention of building regulations, but also that a formal opportunity to rectify it has been refused. If tried in a magistrates' court, the offence will carry a maximum penalty of an unlimited fine and/or the maximum term of imprisonment permitted in a magistrates' court, which is defined in section 126 of the Building Act (as amended by paragraph 81 of Schedule 5 to this Bill) as 12 months (six months until the commencement of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020). If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years' imprisonment.

### **Effect in Wales**

369 In all situations, the power to issue and enforce stop and compliance notices will rest with the building control authority, being the local authority for the area or one designated by Welsh Ministers by virtue of regulations under new section 91ZD of the Building Act, inserted by clause 31(3). Appeals against stop and compliance notices will be to a magistrates' court in Wales.

### **Background**

370 This clause introduces new powers for building control authorities to enhance their ability to address non-compliance with building regulations without resorting to criminal prosecution.

371 Stop notices are being introduced as, before the Bill, there was no power available to stop non-compliant building work from being continued or completed; the issue of such a notice will also avoid any nugatory further work being done on a non-compliant building by ensuring each stage is compliant before the next is done.

372 These measures have been modelled on notices under sections 21 and 22 of the Health and Safety at Work etc. Act 1974 and are intended to be used in similar circumstances.

#### **Example 1**

During the construction of a higher-risk building in England, an authorised officer of the Building Safety Regulator notices that a non-compliant material is being used in construction, contrary to what has been specified in the full plans during the Gateway two process. The officer serves the person carrying out the work with a compliance notice, detailing the reason for non-compliance and the requirement to remedy this.

#### **Example 2**

The Building Safety Regulator becomes aware of construction of a higher-risk building in England where the applicant has not received approval of their Gateway two application. The Building Safety Regulator can issue a stop notice under new section 35C(1)(a) to the Principal Contractor, requiring them to cease work immediately. Failure to comply with this notice will be a criminal offence.

#### **Example 3**

A person carrying out refurbishment work has been issued with a compliance notice due to their fitting non-compliant cladding on the external walls of a building. The person has failed to comply with the compliance notice. The

building control authority decides that the appropriate next step is to issue the person with a stop notice, ordering them to stop all work on site until the cladding is replaced. Non-compliance with the stop notice will be a criminal offence.

## Clause 38: Breach of building regulations

### **Effect**

- 373 Subsection (2) of this clause replaces the existing summary-only, fine-only offence in section 35 of the Building Act 1984 (penalty for contravening building regulations), making it triable either way, and also providing for imprisonment as a possible sentencing option – for the maximum term of imprisonment permitted in a magistrates’ court, as defined in section 126 of the Building Act, as amended by paragraph 80 of Schedule 5 of this Bill, i.e. 12 months (six months until the commencement of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020), or an unlimited fine. If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years’ imprisonment. The substituted version of section 35 also increases the maximum daily fine from £50 to level 1 on the standard scale (currently £200), reflecting inflation since 1984, when a Level 1 fine was £50.
- 374 In addition, new section 35(1) expands the existing offence of contravening building regulations so that it also covers requirements imposed under building regulations; for example, requirements imposed at the time of granting building control approval, such as provision of revised plans. Subsection (2) retains the existing power to exclude provisions of building regulations from the offence in section 35; the existing power has been used to make regulation 47 of the Building Regulations 2010. Subsection (3) provides for the building regulations to make provision for defences in relation to specific building regulations, to be used by persons whose circumstances meet the criteria of the defence to dispute a charge against them.
- 375 Subsection (3) of this clause amends section 36 of the Building Act 1984 (notice requiring rectification of non-compliant work) to extend the time limit during which rectification in respect of a contravention of building regulations can be required from twelve months to 10 years.

### **Effect in Wales**

- 376 Clause 38 will apply equally in Wales.

### **Proposed use of power**

- 377 As part of the new building safety regime dutyholders will be required to report certain matters taking place during design and construction, as part of a mandatory occurrence reporting regime. The power created by new section 35(2) is intended to be used in England to create two defences in relation to these duties in secondary legislation:
- A defence to the offence of failure to report where the person being prosecuted was not aware of the occurrence which gave rise to the requirement to report, so long as that person had taken all reasonable steps to be made aware, in sufficient time, of the occurrence. This will place the onus on the Principal Contractor and Principal Designer to take steps to become aware of occurrences happening on site.
  - The obligation to report will lie on both the Principal Contractor and Principal Designer. In order to avoid duplicate reports of occurrences, it will be a defence to the

offence of failure to report within the prescribed period where the person being prosecuted reasonably believed that the other dutyholder (i.e. where the Principal Contractor is being prosecuted, then the Principal Designer, and vice versa) had already reported the occurrence.

### **Background**

378 Alongside clause 37, this clause provides stronger sanctions for use by building control authorities against those who seek to breach building regulations. This follows Dame Judith Hackitt’s finding in her foreword to the Independent Report that one of the key issues underpinning the failure of the Building Safety Regulatory system that led to the Grenfell Tower fire was that there was “Inadequate regulatory oversight and enforcement... Where enforcement is necessary, it is often not pursued. Where it is pursued, the penalties are so small as to be an ineffective deterrent.”

#### **Example**

The Building Safety Regulator may discover what it believes to be an instance of non-reporting and decide to prosecute a Principal Contractor on this basis. However, the Principal Contractor has evidence which suggests that he had reason to believe the Principal Designer had already reported the relevant occurrence. Such evidence could be used as a defence against the charge.

## **Clause 39: Liability of officers of body corporate**

### **Effect**

379 Clause 39 inserts new section 112A into the Building Act 1984 which provides that, where a corporate body commits a criminal offence under that Act, any director, manager, secretary or other similar officer of that body is also deemed to have committed that offence in certain circumstances. Those circumstances are where the individual has consented to or connived in the commission of the offence or where the offence is attributable to any neglect on their part. Clause 138 makes similar provision in respect of the criminal offences in Parts 2 or 4 of this Bill.

### **Effect in Wales**

380 Clause 39 will apply equally in Wales.

### **Background**

381 Many of those persons carrying out duties under the Building Act 1984 and the new regime are and will be corporate bodies rather than individuals. As a corporate body operates only by and through the actions of its employees, including managers and directors, if there is an offence by a body corporate, then there is likely also to be some measure of personal failure by one or more individuals, particularly those in a position to make critical decisions.

382 It will be appropriate to consider what evidence has been obtained against the company and the director or senior manager, taking into account the management arrangements. One purpose of bringing a prosecution under this clause should be to bring home the importance of building safety responsibilities to those directing companies.

383 Where there is sufficient evidence and the public interest test is met, prosecutions could be brought against directors/managers as well as prosecuting the company for an offence under the relevant statutory provisions, even where there is a sole director. This would not be regarded as

prosecuting the same person twice, as the two are separate legal entities. Should both matters result in a conviction, it will be for the sentencing court to sentence the individual(s) and the corporate body appropriately.

384 New section 112A has been modelled on Section 37 of the Health and Safety at Work etc. Act 1974.

### Example

If a subcontractor working on a project in the build phase decides to substitute agreed materials for inferior and noncompliant ones in order to increase their profit margin, the building control authority's first response is likely to be to point out the problem and ask that it be rectified. If the inferior materials are not replaced with compliant ones, the building control authority could serve a compliance notice under new section 35B of the Building Act 1984, non-compliance with which would be an offence under new section 35B(4). If the subcontractor is a corporate body and there is evidence that a particular director or manager has made the decision not to replace the noncompliant material, that director or manager could be prosecuted as well as or instead of the corporate body and could be sentenced to imprisonment by the court.

## Clause 40: Revocation of certain provision made under section 2(2) of ECA 1972

### Effect

385 Clause 40 provides powers for building regulations to revoke provisions in building regulations which were made using powers in section 2(2) of the European Communities Act 1972. In common with the usual procedure for building regulations, this will use the negative resolution procedure.

386 Clause 40(1) treats building regulations made using powers in both the Building Act 1984 and s2(2) of the European Communities Act as a 'combined instrument'. Clause 40(2) provides powers for building regulations to revoke provision in a combined instrument.

387 Clause 40(3) also disapplies paragraphs 13 and 14 of Schedule 8 to the European Union (Withdrawal) Act 2018 in respect of any regulations which amend provision in a combined instrument. This will mean that any such regulations will be made using the negative resolution procedure rather than the affirmative procedure, and the publication in draft procedure will be disapplied.

### Effect in Wales

388 Subsections (1) and (2) of this clause apply in Wales. Paragraphs 13 and 14 of Schedule 8 to the European Union (Withdrawal) Act 2018 do not apply to statutory instruments made by the Welsh Ministers, so subsection (3) does not apply in Wales.

### Background

389 Building regulations (specifically, the energy efficiency requirements in Part 6 and Part L of Schedule 1, and the broadband requirement in Part R of Schedule 1) have been used to implement provisions in EU legislation, particularly the Energy Performance of Buildings Directive (EPBD) and Article 8 of the Broadband Cost Reduction Directive.

390 The power to revoke these regulations in full was lost at the end of the implementation period, with the repeal of section 2(2) European Communities Act. Without the ability to revoke these

provisions in building regulations, the Government would be constrained in its ability to update and improve the legislation, which could never be fully revoked, for instance in a consolidation exercise.

- 391 The European Union (Withdrawal) Act 2018 envisages that over time EU retained legislation will need to be amended or revoked, as it is replaced by new domestic legislation, and clause 40 has been included for this purpose.
- 392 Paragraphs 13 and 14 of Schedule 8 to the EU Withdrawal Act set out procedure to be followed in legislation which amends or revokes certain retained EU law including that regulations should follow the affirmative procedure, and a requirement for pre-publication of the regulations.

### Example

The building regulations will need to be updated in the light of the changes being made in the Building Safety Bill. As part of this exercise, the Government will also be giving careful consideration to the merits of consolidating the significant number of amendments which have been made to the regulations in recent years. The ability to revoke the existing regulations and replace them with new regulations is necessary to enable this to be done. Without the power in subsection (2) of clause 40, there would be an anomalous position, in that building regulations made under section 2(2) of the European Communities Act could not be included in any exercise to update and consolidate the building regulations and could never be revoked.

The Government has consulted on proposals to introduce the Future Homes Standard and Future Buildings Standard to improve the energy efficiency and sustainability of new homes and buildings. This will require changes to building regulations including, potentially, those which implemented provisions in the EPBD; these changes may, in the absence of subsection (3) of clause 40, engage the pre-publication and affirmative resolution procedure. The established procedure in the Building Act 1984 is for changes to building regulations, including the energy efficiency requirements, to be made following the negative resolution procedure.

## Building control approvers and building inspectors

### Clause 41: Regulation of building control profession

#### **Effect**

- 393 Clause 41 amends the Building Act 1984 by inserting a new Part 2A into the Act which provides for the registration of building inspectors and building control approvers. The overall purpose of Part 2A is to improve competence levels and accountability in the building control sector by creating a unified professional and regulatory structure for building control, changing and modernising the existing legislative framework. The Building Safety Regulator will also assist and encourage building inspectors under its duty in clause 6(2).
- 394 In future, the Building Safety Regulator and each local authority (to be collectively known as building control authorities, as defined in clause 31) and each registered building control approver

will be required, before exercising specified building control functions in relation to a building project (such as approving plans or submitting an initial notice), to obtain and consider advice from a registered building inspector. They will also be required to use a registered building inspector to carry out restricted activities (such as building control inspections).

395 Individuals in both the private and public sector who wish to be registered building inspectors must in the future meet the same minimum standard criteria to be placed on the register. Registered building inspectors will be able to provide advice to the building control authorities or registered building control approvers, in line with the type of registration they hold. Current “Approved Inspectors” (i.e. organisations) wishing to undertake building control work will also have to meet minimum criteria to become registered as building control approvers, becoming subject to the oversight of the regulatory authority (the Building Safety Regulator in relation to England, and the Welsh Ministers in relation to Wales). Local authorities are not being required to register as they are the default building control authority in an area and are already subject to intervention powers (including the Secretary of State having the power to transfer their building control functions to another local authority or to the Secretary of State) where they are failing (see section 116 of the Building Act 1984, as amended by clause 44).

396 Local authority (or Building Safety Regulator) employees who are currently building inspectors may wish to formally register as a ‘registered building inspector’. The registered building inspector that building control authorities use to provide advice on specified functions could be an employee or someone contracted to provide the advice. An individual who is currently an Approved Inspector could register:

- as a registered building inspector (which would allow them to provide advice to others);
- as a registered building control approver (which would allow them to undertake building control work under Part 2 of the Building Act 1984, but they would need to obtain advice from a registered building inspector before exercising prescribed functions); or
- as both (which would allow them to undertake Part 2 work and rely on their own expert advice before exercising the prescribed functions).

397 New sections 58B to 58D set out the requirements for the registration of individuals as registered building inspectors by the regulatory authority. The new sections provide for the regulatory authority to publish the criteria for registration, an application procedure and enables the regulatory authority to grant registration with restrictions (for instance as to the type of buildings on which an inspector can give advice) or subject to conditions (for instance requiring regular training) and for the Secretary of State (and Welsh Ministers in Wales) to set, in regulations, the length registrations are valid (for instance five years).

398 New sections 58E to 58M set out more detail on the ongoing regulation of registered building inspectors including an inspector applying to vary or cancel their registration (for example to be able to provide advice on further types of buildings after improving their competence through training), that the regulatory authority will publish a code of conduct for inspectors, how to deal with professional misconduct by inspectors (including a power to seek information from inspectors), disciplinary action that can be taken (including varying, suspending or cancelling an inspector’s registration) and appeals. The new sections set out a new offence of acting outside the scope of their registration without reasonable excuse i.e. providing advice or carrying out a

restricted activity on a type of building which is outside the restrictions specified on their registration or providing advice or carrying out a restricted activity whilst suspended. It also sets out a new offence of impersonating a registered building inspector with intent to deceive.

- 399 New sections 58N to 58P set out the requirements for the registration of persons (i.e. organisations or individuals) as building control approvers by the regulatory authority. The new sections provide for the regulatory authority to determine the criteria for registration, an application procedure for the registration of building control approvers and enables the regulator to grant registration with restrictions (for instance as to the type of buildings the registered building control body can work) or subject to conditions, and for the Secretary of State (and Welsh Ministers in Wales) to set, in regulations, the length of registrations.
- 400 New sections 58Q to 58X set out more detail on the ongoing regulation of registered building control approvers including applying for a variation or cancellation of registration, that the regulatory authority will publish professional conduct rules, a power for the regulatory authority to seek information from registered building control approvers, and investigations and sanctions if a registered building control approver contravenes the professional conduct rules. It also sets out two new offences of (1) exercising a building control function outside the scope of its registration (i.e. outside the restrictions specified on its registration or taking on new work when suspended), without reasonable excuse (for instance where the approver has not been informed by the regulatory authority that it has been suspended) and (2) of impersonating a registered building control approver with intent to deceive.
- 401 New section 58Y enables the regulatory authority to designate some or all of functions under sections 58B to 58X to be undertaken by another body.
- 402 New section 58Z enables the regulatory authority to make operational standards rules for local authorities and registered building control approvers. Local authorities and registered building control approvers must comply with the rules in the exercise of their building control functions. The regulatory authority must publish the rules and may revise and republish these rules from time to time.
- 403 New section 58Z1 enables the regulatory authority to direct local authorities and registered building control approvers to provide at specified times or intervals, such specified reports, returns and other information relating to the exercise of their building control functions. This could include periodic data reporting. A registered building control approver who fails to comply with the direction or provides false or misleading information commits an offence. This offence is punishable by a fine.
- 404 New section 58Z2 enables Welsh Ministers to request a local authority or registered building control approver to provide any documents or information relating to the exercise of their building control functions. A notice must be provided to the local authority or registered building control approver in writing to specify the nature and type of information required. A registered building control approver who fails to comply with the notice or provides false or misleading information commits an offence that is punishable by a fine.
- 405 New section 58Z3 enables the regulatory authority to investigate a local authority or registered building control approver if they may have failed to meet the operational standards rules. The regulatory authority must first publish a statement of the investigation procedure it intends to follow and allow for the authority or building control approver to make representations. The regulatory authority may revise and publish the revised statement at any time.
- 406 New section 58Z4 allows the regulatory authority to issue an improvement notice to a local

authority or registered building control approver if following an investigation or otherwise, they have breached the operational standards rules. The purpose of an improvement order is to direct the authority or registered building control approver in default to remedy the breach as specified in the order. The improvement notice must be served with a statement of reasons to explain why it has been served. In England, copies must be provided to the Secretary of State. In the case of a registered building control approver, copies must additionally be provided to each local authority. The notice has effect for the timeframe specified in the notice or until it is revoked. A local authority or registered building control approver may appeal the improvement notice to the First-tier Tribunal.

407 New section 58Z5 allows the regulatory authority to issue a serious contravention notice to a local authority or a registered building control approver if following an investigation or otherwise, it is found that the operational standards rules have been breached and this poses a risk to the safety of people in or about buildings. The regulatory authority may also issue a serious contravention notice if an improvement notice has been breached. The purpose of the serious contravention notice is to direct an authority or registered building control approver to take specific action as set out in the notice to remedy the breach. The serious contravention notice must be served with a statement of reasons to explain why it has been served. In England copies must be provided to the Secretary of State. In the case of a registered building control approver, copies must additionally be provided to each local authority. The notice has effect for the timeframe specified in the notice or until it is revoked. An authority or registered building control approver may appeal the serious contravention notice to the First-tier Tribunal. A person who contravenes the notice commits an offence and is liable to pay a fine.

408 New section 58Z6 - If the regulatory authority has given a registered building control approver one or more serious contravention notices and considers the way in which the registered building control approver exercises their building control functions falls short of the standards expected, puts the safety of persons in or about buildings at risk and is likely to continue to do so, the regulatory authority may cancel the building control approver's registration. The regulatory authority must first notify the registered building control approver that it is considering taking this action and provide its reasons for this. The building control approver must be invited to make any representations in respect of the proposed action within specified timeframes which must be no less than 14 days. Where the regulatory authority proceeds to cancel the approver's registration, it must notify the approver and each local authority that it has done so and provide a statement explaining why the decision has been taken. A registered building control approver may appeal to the First-tier Tribunal against the cancellation of its registration.

409 New section 58Z7- If the Building Safety Regulator has given a local authority one or more serious contravention notice and considers the way in which the authority exercises their building control functions falls short of the expected standards, puts the safety of persons in or about buildings at risk and is likely to continue to do so, the Regulator may recommend to the Secretary of State to make an order for the authority's functions to be transferred to the Secretary of State or another local authority. The Building Safety Regulator must initially notify the authority that it is considering taking such action and explain its reasons for this. The authority must be invited to make any representations in respect of the proposed action within specified timeframes which must be no less than 14 days. Where the Building Safety Regulator proceeds to act, it must notify the authority that it has done so and provide a statement explaining why the decision has been taken. A local authority may appeal to the First-tier Tribunal against such recommendation.

### **Effect in Wales**

410 The provisions relating to the registration and ongoing regulation of building inspectors and

building control approvers will apply in Wales save that “regulatory authority” in Wales will be the Welsh Ministers. Section 58Y enables the regulatory authority (being the Welsh Ministers for Wales) to delegate some or all of the regulatory authority’s registration functions under sections 58B to 58X to be undertaken by another person. The power to set and oversee operational standards for both approvers and local authorities in Wales will rest with Welsh Ministers as the regulatory authority. This includes powers to require the provision of periodic and particular information, investigative powers and the issue of improvement and contravention notices. Welsh Ministers will have powers in relation to the deregistration of an approver in the face of significant contravention (powers to transfer local authority functions already exist in the current act).

## **Background**

411 This is a new provision.

### **Example 1: Individual building inspector registration**

An individual who wants to work as a registered building inspector will need to submit an application to the regulatory authority demonstrating how they meet the published criteria. The criteria set by the regulatory authority may include measures of competence, being a fit and proper person, previous experience etc. Upon reviewing the application, the regulatory authority will decide whether or not to grant registration and if any restrictions or conditions should be imposed on the inspector’s registration. Restrictions may include matters such as the type or height of buildings an inspector may advise on.

### **Example 2: Building control approver registration**

A person (for instance a private sector company or sole trader) who wishes to undertake building control work under Part 2 of the Building Act 1984 will need to be registered. A person will need to submit an application to the Building Safety Regulator demonstrating how they meet the regulatory authority’s criteria for registration as a building control approver. After reviewing the application, the regulatory authority will decide whether or not to grant registration and if there are any restrictions or conditions that should be imposed on the building control approver’s registration. Restrictions may include matters such as the type or height of buildings a building control approver can work on.

Section 58Z - The regulatory authority publishes operational standards rules for local authorities and registered building control approver. Local authorities and registered building control approver have to adhere to these rules and comply with the requirements in the exercise of their duties and functions. Over the course of time, there are changes within the industry which mean that the rules need to be revised to reflect best practice requirements for local authorities and registered building control approver. The regulatory authority may revise the rules and must publish the revised rules for local authorities and registered building control approvers to see so that they have access to it.

Section 58Z1 - The regulatory authority requires information from a registered

building control approver in relation to the exercise of its building control function. The Building Safety Regulator writes to the building control approver to direct it to provide specific reports, returns and other information and specifies the date when the information is to be provided. In providing its return to the regulatory authority, the building control approver provides false and misleading reports and therefore commits an offence. The registered building control approver is convicted of the offence and ordered to pay a fine.

Section 58Z2 - Welsh Ministers require information from a registered building control approver in relation to its building control functions. The Welsh Ministers provide a notice in writing to the registered building control approver which specifies the information required, the date by which it is required and the form the information must be provided in. The registered building control approver fails to comply with the notice. The registered building control approver commits an offence by failing to provide the information requested. The registered building control approver is convicted of the offence and ordered to pay a fine.

Section 58Z3 - The regulatory authority receives a complaint that a local authority has failed to meet the operational standards rules in the exercise of their building control functions. The regulatory authority decides to investigate the local authority. The regulatory authority will have published a statement outlining the procedures it will follow in relation to investigations and provides an opportunity for the local authority to make representations during the investigation.

Section 58Z4 - Following an investigation, it is established that the operational standards rules have been breached by local authority. To remedy the situation, the regulatory authority serves an improvement notice on the local authority together with a statement of reasons explaining why the notice has been served. In England the Building Safety Regulator also provides copies to the Secretary of State. The regulatory authority sets out in the notice what specific actions the authority must take to resolve the breach and sets a timeframe of 28 days to complete these actions. The local authority reads the statement of reasons and understands why the decision has been taken to serve the notice. The local authority chooses to comply with the notice and does not appeal to the First-tier Tribunal. The local authority undertakes all actions set out in the improvement notice within 28 days to remedy the breach.

Section 58Z5 - Following an investigation, it is established that the operational standards rules have been breached by a local authority and this represents a risk to the safety of people in or about the buildings in concern. To remedy the situation, the regulatory authority serves a serious contravention notice on the local authority together with a statement of reasons to explain why the notice has been served. In England the Building Safety Regulator also provides copies to the Secretary of State. The regulatory authority sets out in the notice what

specific actions the authority must take to resolve the breach and sets a timeframe of 28 days to complete these actions. The local authority does not appeal the notice to the First-tier Tribunal. The local authority reads the statement of reasons and understands why the decision has been made to serve the notice. The local authority, however, fails to comply with the notice and does not undertake the actions as set out within the 28-day timeframe. The local authority does not have reasonable justification for failing to carry out the actions as directed in the notice and is therefore convicted of this offence and is ordered to pay a fine.

Section 58Z6 - The regulatory authority has given a registered building control approver a serious contravention notice, and the approver appears to be continuing to exercise their building control functions below the expected standard, putting the safety of persons at risk. The regulatory authority considers that the appropriate next step is to cancel the approver's registration. The regulatory authority notifies the approver that it is considering taking such action and explains its reasons. The approver is invited to make any representations within 14 days in respect of this proposed action. After representations have been made, the regulatory authority considers it appropriate to proceed to act and it notifies the approver that it has done so and provides a statement explaining why the decision has been taken. The regulatory authority also notifies each local authority in England. The approver chooses not to appeal the decision to the First-tier Tribunal.

Section 58Z7 - The Building Safety Regulator has given a local authority in England a serious contravention notice, and the local authority appears to be continuing to exercise their building control functions below the expected standard, putting the safety of persons at risk. The Building Safety Regulator considers that the appropriate next step is to recommend to the Secretary of State to make an order to transfer the authority's functions to another local authority. The Building Safety Regulator notifies the local authority that it is considering taking such action and explain its reasons. The local authority is invited to make any representations within 14 days in respect of this proposed action. After representations have been made, the Building Safety Regulator considers it appropriate to proceed to act and it notifies the authority that it has done so and provides a statement explaining why the decision has been taken. The local authority chooses not to appeal this decision to the First-tier Tribunal.

## Clause 42: Transfer of approved inspectors' functions to registered building control approvers

### **Effect**

412 Part 2 of the Building Act 1984 currently provides for Approved Inspectors (including organisations and individuals) to supervise building work. This clause, and Schedule 4, makes a number of consequential amendments to provisions in the Building Act 1984, mainly in Part 2, so

that references to Approved Inspectors are changed to become references to registered building control approvers. Current “Approved Inspectors” (i.e. organisations) wishing to undertake building control work will have to meet minimum criteria to become registered as building control approvers, becoming subject to the oversight of the regulatory authority (the Building Safety Regulator in relation to England, and the Welsh Ministers in relation to Wales).

413 An individual who is currently an Approved Inspector could register:

- as a registered building inspector (which would allow them to provide advice to others);
- as a registered building control approver (which would allow them to undertake building control work under Part 2 of the Building Act 1984, but they would need to obtain advice from a registered building inspector before exercising prescribed functions); or
- as both (which would allow them to undertake Part 2 work and rely on their own expert advice before exercising the prescribed functions).

414 Local authorities will not have to register as building control approvers and will continue to perform their building control functions. This is because local authorities have a statutory duty to enforce building regulations in their area under section 91(2) of the Building Act 1984. It should be noted that under section 116 of the Building Act 1984 (as amended by clause 44) where a local authority is failing, its building control functions can be transferred by the Secretary of State to another local authority.

415 Schedule 4 amends references to “approved inspector” in the Building Act 1984 to “registered building control approver”. Paragraph 12 of the Schedule amends an existing requirement for notification by the magistrates' court. Currently under section 57(3) of the Building Act 1984 the court has to notify the approval body (ie CICAIR), after the amendment the court will need to notify the relevant authority (ie Building Safety Regulator in relation to England or Welsh Ministers in relation to Wales, or the body delegated).

### **Effect in Wales**

416 Clause 42 and Schedule 4 will apply equally in Wales.

### **Background**

417 This clause makes a number of amendments to the Building Act 1984 which are consequential on Approved Inspectors being replaced by registered building control approvers.

#### **Example**

In future initial notices etc. for building control work under Part 2 of the Building Act 1984 will need to be issued by a registered building control approver instead of an Approved Inspector.

## **Clause 43: Functions exercisable only through, or with advice of, registered building inspectors**

### **Effect**

- 418 Clause 43 amends the Building Act 1984 to insert new sections 46A and 54B.
- 419 In relation to building control authorities (defined in section 120A as the Building Safety Regulator and the relevant local authority (section 120A was inserted into the Building Act 1984 by clause 31)), section 46A provides that prescribed building control functions will be specified as functions which building control authorities will only be able to carry out having first obtained and considered the advice of a registered building inspector. New section 54B makes the same provision in relation to registered building control approvers. The purpose of these provisions is to ensure that the Building Safety Regulator, local authorities and registered building control approvers take advice from individuals who have demonstrated relevant expertise before important building control decisions are taken. These restricted functions will be set out in secondary legislation.
- 420 In relation to building control authorities, new section 46A provides that building control authorities must only carry out certain restricted activities through using an appropriately registered building inspector. These activities will be set out in secondary legislation and is likely to include activities like formal building control inspections. New section 54B makes the same provision in relation to registered building control approvers. The purpose of these provisions is to ensure that individuals who have demonstrated relevant competence are carrying out the important activities that are part of the building control process.
- 421 Building control authorities have a statutory duty to supervise and enforce building regulations in their area under section 91(2) of the Building Act 1984 in the case of local authorities, and the new building control regime for higher-risk buildings (and other buildings where a regulator's notice is in force (see clause 31) in the case of the Building Safety Regulator. It is not intended that all of the work they do under this duty will be specified as a function which they must not exercise before they have obtained and considered a registered building inspector's advice. It is intended that the specified functions of a building control authority will be broadly equivalent to those of a registered building control approver.
- 422 Some examples of local authority functions that could be specified in secondary legislation as functions which an authority can only exercise after obtaining and considering advice from a registered building inspector may include approval or rejection of full building plans and issuing completion certificates. Some examples of Building Safety Regulator functions that might be specified include approving a construction Gateway application for a higher-risk building or issuing a completion certificate. Some examples of registered building control approver functions that could be specified in secondary legislation include sending initial notices and issuing plans and final certificates.
- 423 This clause requires that building control authorities and registered building control approvers must obtain and consider the advice of a registered building inspector each time they want to make a decision on a restricted function and to use an appropriately registered building inspector to carry out restricted activities on their behalf. If a registered building control approver breaches these requirements it can be prosecuted and, if found guilty, fined. For building control authorities, in the case of failure to use a registered building inspector to carry out restricted activities or to seek advice from a registered building inspector, their building control decision could be called into question and subject to judicial review for failing to follow the legislative process.

### **Effect in Wales**

- 424 Clause 43 will operate similarly in Wales such that some building control authority functions will be specified as functions which building control authorities (defined as relevant local authorities

for Wales) or registered building control approvers will only be able to carry out having first obtained and considered the advice of a registered building inspector. For higher-risk buildings the relevant local authority will be the building control authority, not the Building Safety Regulator.

## **Background**

425 This clause inserts new sections 46A and 54A into the Building Act 1984.

### **Example 1: Local authority**

A local authority wishes to issue a final completion certificate on a building. The local authority will be required to obtain advice from a registered building inspector (who may or may not be directly employed by them) who provides advice. Some local authorities will have an in-house team who will provide all such advice, but some local authorities who do not have significant amounts of certain building developments may obtain this advice from the inspector employed in another local authority or in the private sector. The local authority will then consider the advice received and make a decision on whether or not to issue the completion certificate.

### **Example 2: Building Safety Regulator**

The Building Safety Regulator is reviewing full plans and giving building control approval under the new construction Gateway two arrangements for higher-risk buildings. Before deciding whether to allow construction to start, it will be required to obtain advice from a registered building inspector on whether the work to create a higher-risk building shown in the Gateway two application (the proposed plans etc.) complies with the technical requirements of the building regulations. The Building Safety Regulator will then consider the registered building inspector's advice before making a decision on whether or not to grant building control approval.

### **Example 3: Registered building control approver**

A registered building control approver wishes to issue a plans certificate for a building. It will be required to obtain advice from a registered building inspector on whether the building work shown in the proposed plans complies with the technical requirements of the building regulations. The registered building control approver will then consider the registered building inspector's advice before making a decision on whether or not to issue the plans certificate.

### **Example 4: Restricted Activities**

A registered building control approver wishes to carry out an inspection to check for compliance of an element of the work with the technical requirements of the building regulations. Where such an inspection is a prescribed activity, the registered building control approver must use a registered building inspector who has the appropriate registration type for the building work and building to

be inspected, to carry out the inspection.

## Clause 44: Default powers of appropriate national authority

### Effect

- 426 Clause 44 amends sections 116 to 118 of the Building Act 1984. The existing sections 116 to 118 apply in England and Wales, some of the amendments in this clause are clarifying what powers the Welsh Ministers already have had transferred to them. Section 116 provides that if the appropriate national authority (ie in England, the Secretary of State or in Wales, Welsh Ministers) is satisfied that a local authority has failed to perform their functions under the Act, it may make an order which declares them to be in default and instruct them to discharge their functions in a specific way and within a specific timeframe. If a local authority fails to comply with this order, the appropriate national authority may make a transfer order to assign to itself specified building control functions belonging to the body in default. The substantive change made to section 116 by the clause is to provide that in England, the Secretary of State must first consult the Building Safety Regulator before making any orders. The Secretary of State may also make a transfer order if the Building Safety Regulator makes a recommendation and if he is satisfied that the authority is exercising its functions below the standard expected, which puts, or may put, the safety of persons in or about buildings at risk, and is likely to continue to do so.
- 427 This clause also amends section 117 of the Building Act 1984. The effect of the amendments is to restate that the Secretary of State's expenses incurred in carrying out functions transfer to him under s116 can be paid from money provided by Parliament. Further the amendments restate that the amount of expenses incurred by the appropriate national authority is recoverable as a debt due to the authority and is to be paid by the body in default.
- 428 This clause also amends section 118 of the Building Act 1984. The appropriate national authority may at any time vary or revoke a transfer order. A substantive change is that the Secretary of State must first consult with the Building Safety Regulator. The appropriate national authority may make any provisions to deal with the transfer, vesting and discharge of any property or liabilities incurred by the person to whom the functions were transferred to, either through the revoking order or a new order.

### Effect in Wales

- 429 Clause 44 will operate similarly in Wales. Welsh Ministers, as the "appropriate national authority" for Wales may also make a transfer order in respect of a local authority if the Welsh Ministers are satisfied that the way in which the authority exercises its functions under the Act falls short of the standards expected.

### Background

- 430 This clause amends sections 116, 117 and 118 of the Building Act 1984, to clarify the powers of the appropriate national authority to intervene where a local authority has failed to perform their functions under the Building Act 1984, and to recognise the role of the Building Safety Regulator in advising the Secretary of State in relation to this power.

#### Example 1

A local authority has failed to perform its building control functions to the required standard. To remedy the situation, the Secretary of State first consults

with the Building Safety Regulator and makes an order which declares the authority to be in default and directs them to carry out their functions in a specific way within a period of 28 days. The authority fails to comply with a requirement of this order within the timeframe. The Secretary of State considers that the appropriate next step is to make a transfer order and first consults with the Building Safety Regulator. The Secretary of State proceeds to make the transfer order which assigns to another local authority specified building control functions that belong to the authority in default.

### Example 2

The Building Safety Regulator notices that a local authority is failing to perform its functions to the required standard and recommends to the Secretary of State that a transfer order should be made. The Secretary of State reviews this recommendation and is satisfied that this authority is likely to continue to exercise its functions below the standard expected and put the safety of people at risk. The Secretary of State proceeds to make the order which assigns the functions of the authority in default to himself.

### Example 3

The Secretary of State considers that the circumstances of the local authority which led to the transfer of its functions has now been resolved. The Secretary of State first consults with the Building Safety Regulator on this issue and then proceeds to make an order to revoke the transfer order. Within this revoking order, the Secretary of State sets out any steps to be taken to deal with the assignment and release of any property or liabilities incurred as a result of the original transfer.

## Clause 45: Higher-risk building work: registered building control approvers

### Effect

- 431 This clause amends Part 2 of the Building Act 1984 in relation to higher-risk building work. Part 2 sets out the building control regime where building work is supervised by an approved inspector (to be renamed as registered building control approver by clause 43 of the Bill).
- 432 The amendments to sections 47 and 51A of the Building Act 1984 remove the ability for persons carrying out any building work which is higher-risk building work to choose their own building control body. (Higher-risk building work is defined in section 91ZA(3), inserted by clause 31, e.g. work to create a higher-risk building or any building work to a higher-risk building). Technically this change is achieved by prohibiting the submission of an initial notice or an amendment notice in relation to higher-risk building work.
- 433 The effect of the amendments in this clause is to provide that any initial notice (or other notice or certificate under Part 2) which specifies building work which is higher-risk building work will be invalid (i.e. will be void and have no legal effect) and Part 2 (including the immunity from enforcement action) would not apply if that building work is carried out. For the avoidance of doubt any work carried out in these circumstances will not have the enforcement protection provided for in sections 48(1), 51(3) or 53(2) of the Building Act 1984. Further it is irrelevant

whether the local authority purported to accept the initial notice – as it is void ab initio any acceptance of it will also have no effect.

- 434 Only the Building Safety Regulator can carry out supervision of higher-risk building work (see section 91ZA of the Building Act 1984, inserted by clause 31). A person wishing to carry out building work which is higher-risk building work is unable to use a registered building control approver (currently known as Approved Inspectors) or a local authority to supervise that work.
- 435 New section 52A is inserted into the Building Act 1984 to deal with the situation where there are changes to original plans after an initial notice has been submitted i.e. where the original initial notice did not specify higher-risk building work but plans are changed later so that the work, if built, would result in some or all of the works being higher-risk building work. In this scenario the registered building control approver (or the person carrying out or intending to carry out the work) must cancel the relevant part of the original initial notice. The local authority is also required to cancel the relevant part of the initial notice if it becomes aware that some or all of the work is higher-risk building work.
- 436 Additionally, in England only, where the relevant part of an initial notice is cancelled under new section 52A the registered building control approver, person carrying out or intending to carry out work or local authority who cancelled it is under a duty to inform the Building Safety Regulator of the cancellation.
- 437 It is a criminal offence if without reasonable excuse the body or the person fails to cancel the relevant part of the notice or, in England, fails to give a copy of the notice to the regulator.
- 438 New section 52B is inserted into the Building Act 1984. It applies only where an initial notice is cancelled under new section 52A i.e. where the original initial notice did not specify any higher-risk building work, but plans subsequently changed. Section 52B(2) provides that where the relevant part of an initial notice is cancelled under section 52A and a final certificate has been given and accepted in relation to some or all of the work, then that work will have enforcement protection. The new section 52B also provides that the Building Safety Regulator will enforce building regulations in respect of all of the uncertified work, regardless of whether it is in relation to a period before or after the work became higher-risk building work.
- 439 Subsection (5) of clause 45 creates a right of an appeal where a local authority cancels an initial notice under section 52A(4). The person carrying out the work or the registered building control approver may appeal to the magistrates' court (in Wales) or the First-tier Tribunal (in England) on the grounds that the initial notice was not properly cancelled. Where the court or tribunal rules that the local authority has wrongly cancelled the notice, the original notice is not reinstated, however any issued final certificate persists, if accepted prior to the cancellation. The person carrying out the work and a registered building control approver may submit a new initial notice within seven days of the court or tribunal's ruling being handed down. This can be with either the original registered building control approver or another one. If the registered building control approver of the new initial notice is different to the registered building control approver of the original initial notice, then the certificate and transfer report process in sections 53B to 53E apply.

### **Effect in Wales**

- 440 Clause 45 will operate in the same way in Wales where choice of building control body is similarly removed for higher-risk building work. For such work only the local authority for the area or as designated by Welsh Ministers will be able to act as building control authority. Where changes result in work becoming higher-risk building work, cancellation of the original notice and notification to the local authority will be required.

## **Background**

- 441 This clause amends sections 47, 51A and 53 of the Building Act 1984 and inserts new provisions, section 52A and 52B into that Act. The current provisions in the Building Act 1984 allow for supervision of plans and building work to be undertaken either by local authority building control or by an Approved Inspector (or by a public body itself – see clause 46).
- 442 Clause 45 amends the Building Act 1984 to prevent a dutyholder in relation to higher-risk building work from choosing their building control body, as recommended by the Independent Review. The amendments ensure the new Building Safety Regulator is the building control body for this type of building work and is able to apply the new regulatory arrangements to improve the safety of such buildings. The definition of ‘higher-risk building work’ is dealt with in clause 31.

### **Example 1**

A registered building control approver inadvertently specifies some higher-risk building work in an initial notice. Whether or not the notice is accepted by the local authority the notice would be void and have no legal effect as section 47(1)(a) (as amended by this clause) makes it unlawful for an initial notice to relate to a higher-risk building work. The whole notice would be void.

The following examples apply in circumstances where there is a new non-higher-risk building due to be constructed, and there is a change to the use or the height of, or number of storeys in the building such that after the works the building is a higher-risk building. In these scenarios, the dutyholder for the building work must follow the regulatory process for higher-risk buildings, and only the Building Safety Regulator can supervise the building work relating to such buildings.

### **Example 2: Registered Building Control Approver**

A registered building control approver may have submitted an initial notice for a building which did not specify any higher-risk building work, but with a change of plans the work subsequently becomes higher-risk building work. They will be required to submit a cancellation notice to the local authority. The supervision of building work in relation to higher-risk building work is to then be the role of the Building Safety Regulator (see section 91ZA of the Building Act 1984 as inserted by clause 31) and the construction Gateways or refurbishments etc. processes must be used.

### **Example 3: Person(s) carrying out the work**

The person(s) carrying out the work under an existing initial notice wishes to change their building plans for a development to such an extent that it results in the building, if built, being a higher-risk building. If the change requires planning permission, then planning Gateway one will apply and the local planning authority will inform them that the development will be required to be submitted with a Fire Statement. If the change is possible without a new planning permission, then their existing registered building control approver

(currently known as Approved Inspector) should inform the person(s) that this will result in the works becoming higher-risk building work. If the person(s) carrying out the work wishes to continue with the change they should then cancel the existing initial notice and follow the new Gateway etc. process.

#### **Example 4: Local authority**

A local authority may receive an amendment notice which amends the original initial notice so that some or all of the works become higher-risk building work. An amendment notice that relates to proposed higher-risk building work would be invalid and the local authority should explain this to the registered building control approver/person intending to carry out the works. The local authority has no power to accept or reject the amendment notice as it is void. If the local authority becomes aware that the higher-risk building work has started, then it must cancel the relevant part of the original initial notice under the power in section 52A notifying the registered building control approver and person(s) carrying out the work. The supervision of building work in relation to higher-risk buildings is the role of the Building Safety Regulator (see section 91ZA of the Building Act 1984 as inserted by clause 31) and the construction Gateways etc. processes must be used.

#### **Example 5: Part cancellation of an initial notice**

A local authority receives an initial notice for a building project containing five buildings that are not higher-risk building work. Later the developer changes the plans for one of the buildings to be a higher-risk building and for the other four to remain non-higher-risk buildings. The initial notice would be partially cancelled, remaining valid for the four non-higher-risk buildings but not valid for the fifth, higher-risk building.

### **Clause 46: Higher-risk building work: public bodies**

#### **Effect**

443 Clause 46 amends the Building Act 1984 by inserting a new section 54A into the Act. Section 54A gives the Secretary of State the power to make regulations amending sections 5, 54 and Schedule 4 to the Act in relation to higher-risk buildings. This power would enable the Secretary of State to create a modified higher-risk buildings regime for public bodies, for example, prevent a public body from submitting a public body notice (a notice given to the local authority to supervise their own building work instead of the local authority) for higher-risk building work.

#### **Effect in Wales**

444 Clause 46 will apply equally in Wales providing the equivalent power to Welsh Ministers

#### **Proposed use of power**

445 This provision allows the Secretary of State to make regulations as to how the new regulatory regime for higher-risk buildings will be applied (if at all) to a public body designated under section 5 and 54 of the Building Act 1984.

## **Background**

- 446 A public body is defined in section 54 of the Building Act 1984 as a body (corporate or unincorporated) that acts under an enactment for public purposes and not for its own profit and is, or is of a description that is, approved by the Secretary of State in accordance with building regulations. There are currently no public bodies approved by the Secretary of State under section 54.
- 447 Historically, provision for public body notices under section 54 of the Building Act 1984 allowed public bodies to carry out supervision of their own building work. This means it is allowed to supervise its own building work only where a public notice has been accepted.
- 448 Moreover, section 5 of the Building Act 1984 enabled public bodies to benefit from an exemption from procedural requirements of the building regulations. This meant that an 'exempt body' does not have to notify a local authority when starting any works.
- 449 Were such a public body to supervise their own higher-risk building work and/or have the ability not to notify the Building Safety Regulator there would be a potential conflict of interest.

### **Example**

The Secretary of State becomes aware that a public body is proposing to build a residential building of 18 metres or higher, and the Secretary of State decides it is not appropriate for the public body to supervise its own higher-risk building work without the regulatory oversight of the Building Safety Regulator.

The Secretary of State decides to make regulations that prevent such public bodies from doing this and the body would be required to follow the construction Gateways etc. and proceed under the supervision of the Building Safety Regulator.

## **Clause 47: Insurance**

### **Effect**

- 450 Clause 47 amends section 47 of the Building Act 1984. The amendment allows the Secretary of State to designate bodies to approve insurance schemes and also to publish guidance as to the adequacy of insurance schemes.

### **Effect in Wales**

- 451 Clause 47 will apply equally in Wales. Welsh Ministers will have powers to designate bodies and publish guidance.

### **Background**

- 452 Section 47(6) of the Building Act 1984 currently allows for the Secretary of State to approve a scheme that appears to secure the provision of adequate insurance for the work undertaken by Approved Inspectors (registered building control approvers under the new system). The Secretary of State publishes criteria for schemes of insurance. The Bill amends this section in order to allow the Secretary of State to designate bodies to undertake this function. The insurance market for registered building control approvers is intricate and some bodies have specialist insurance expertise in this area. This power will enable the Secretary of State to appoint specialist bodies to undertake this work.

### Example

The Secretary of State will be able to approve insurance schemes, or designate bodies (corporate or unincorporated) to approve schemes and publish guidance.

An insurer or broker wants to submit a scheme of insurance to the Secretary of State or a body the Secretary of State has designated. This designated body will be able to approve the scheme following consultation with the Secretary of State.

The power conferred to the Secretary of State to designate bodies allows restrictions to be placed on any designation, for example a body might be asked only to approve particular types of schemes.

## Clause 48: Plans Certificates

### **Effect**

- 453 Clause 48 amends section 50 of the Building Act 1984 on plans certificates.
- 454 Clause 48(2)(a) inserts into the Act new section 50(1A), which sets out the conditions which must be met for a registered building control approver to issue a plans certificate. These are that the registered building control approver must have inspected the full plans or such plans as are sufficient for the purposes of issuing a plans certificate for the work (new section 50(1A)(a)(i) and (ii)); that the plans are not defective (new section 50(1A)(b)); that the registered building control approver is satisfied that the work covered by the plans, if carried out in accordance with the plans, will comply with building regulations' requirements (new section 50(1A)(c)); and that relevant consultation requirements have been met ((new section 50(1A)(d)).
- 455 Where the conditions are met, and the person carrying out the work so requests, new sections 50(1B) and (1C) require that the registered building control approver must issue a plans certificate.
- 456 New section 50(1D) requires that plans certificates must be provided in the prescribed form.
- 457 Clause 48(2)(c) inserts new section 50(7A) into the Building Act 1984 which enables building regulations to prescribe circumstances in which a plans certificate must be issued and the consequences if a plans certificate is not issued in those prescribed circumstances, for example that the initial notice which has been issued for the work ceases to have effect. It is expected, for example, that plans certificates will be required for buildings covered by the Regulatory Reform (Fire Safety) Order 2005.
- 458 It also enables building regulations to prescribe that, where the registered building control approver issues a plans certificate in the circumstances set out in subsection (1A)(a)(ii), prescribed information needs to be included on the plans certificate about further plans which the registered building control approver considers need to be provided.
- 459 Clause 48(3) amends paragraph 2 of Schedule 4 to the Building Act 1984 to make similar provision in respect of a public body's notice plans certificate.

### **Effect in Wales**

- 460 This clause applies in Wales.

## **Background**

- 461 Section 50 of the Building Act 1984 enables a registered building control approver, at the request of a person intending to carry out building work, to issue a plans certificate to the local authority if they have inspected plans of work covered by an Initial Notice, and are satisfied that if the work is carried out in accordance with the plans, the work will comply with building regulations' requirements. Under section 53 of the Act and Regulation 15 of the Building (Approved Inspectors) Regulations 2010, a plans certificate has the effect that a local authority cannot take action under sections 35 and 36 of the Building Act 1984 if the work covered by the certificate has been carried out in accordance with the plans.
- 462 A local authority can reject a plans certificate only on prescribed grounds, which are set out in Schedules 2 and 3 of the Approved Inspectors Regulations. The form of a plans certificate is set out in Schedule 1 of the Approved Inspectors Regulations.
- 463 Paragraph 2 of Schedule 4 to the Building Act 1984 provides that a public body's notice plans certificate can be issued for work covered by a public body's notice if the same conditions as apply to the issue of a plans certificate are met. A public body's plans certificate is the same as for a plans certificate. The grounds for rejecting a public body's notice plans certificate, and the form of a public body's notice plans certificate, are set out in Schedules 1, 5 and 6 of the Approved Inspectors Regulations.
- 464 The Government consulted in Summer 2020 on proposals that plans certificates should be mandated in certain circumstances. Following the consultation, the Government announced that it would proceed with these plans. See Part 3 of [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/970325/UPDATED\\_FINAL\\_Government\\_Response\\_to\\_Fire\\_Safety\\_Consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970325/UPDATED_FINAL_Government_Response_to_Fire_Safety_Consultation.pdf).

### **Example**

A person carries out building work on a building covered by the Fire Safety Order 2005. A registered building control approver is appointed as the building control body for the work. The registered building control approver has to check the plans of the work to ensure that if work is carried out in accordance with the plans it will comply with building regulations' requirements and issue a plans certificate to the local authority using the prescribed form. However, not all the plans for the work are available to be checked at the point at which the plans certificate is issued. Therefore, although the registered building control approver considers the plans are sufficient to issue a plans certificate, they require further plans to be provided and this is set out on the plans certificate.

## **Clause 49: Cancellation of initial notice**

### **Effect**

- 465 This clause amends section 52 of the Building Act 1984 to make new provision in relation to cancellation of initial notices by registered building control approvers, local authorities and the person intending to carry out the work.
- 466 Section 52(1) is amended to require a registered building control approver to cancel its relevant initial notices where it is subject to disciplinary sanction from the Building Safety Regulator in relation to the work – this links to the new sanctions in relation to registration.

467 The existing offence under this section has been extended to registered building control approvers so that failure to act in regard to cancelling initial notices will result, if found liable on summary conviction, to a fine.

468 Section 52(3) is also amended to insert a new power to prescribe further circumstances where a person carrying out work is required to cancel the initial notice for the work. This is a reserve power. There are no current plans to use this power but as the regime is changing it is considered important to have this flexibility.

469 Section 52 is also amended to insert a new subsection (5A) which provides that a local authority must cancel an initial notice where it becomes aware that the registered building control approver has had its registration varied (such that it is not registered in relation to the work), suspended or cancelled, and in other circumstances to be prescribed.

### **Effect in Wales**

470 Clause 49 will apply equally in Wales. For example, disciplinary action from Welsh Ministers or their designated body in respect of an Approver under clause 41 will require cancellation of an initial notice.

### **Background**

471 At present, if an Approved Inspector/registered building control approver ceases to operate and has not cancelled its initial notices, only the person(s) carrying out the work is able to do so. This has been a significant problem in transitioning such work to local authority building control. This clause amends section 52 of the Building Act 1984 to introduce new powers and obligations on the person shown on the initial notice as the registered building control approver (even if they are no longer registered), local authority and person carrying out the work to cancel initial notices and ensure that this process can happen efficiently in the future.

#### **Example 1: Registered building control approver**

It is expected that the Building Safety Regulator might use one of its disciplinary powers for a registered building control approver where the body does not have insurance for the type of work covered by an initial notice.

Where the registered building control approver has insurance only to supervise domestic projects, if the Building Safety Regulator finds out that it is working on commercial projects without insurance, then its registration may be suspended in relation to commercial projects pending the approver obtaining insurance cover.

The Building Safety Regulator will notify the body and all local authorities. Under new section 52(1) the body will be required to cancel its own initial notices, in this case for commercial projects.

Under the amendments to section 52(5) local authorities will also be required to cancel initial notices in this scenario. The local authority must give the registered building control approver seven days' notice of the intended cancellation to give the body an opportunity to make representations to the local authority.

#### **Example 2: Local authority**

A registered building control approver may be subject to a disciplinary sanction by the Building Safety Regulator (or its designated body), for example because there had been a significant breach in their registration such as failing to carry out inspections which resulted in property damage or personal injury.

The local authority is required to cancel the initial notice when it was informed by the Building Safety Regulator of the suspension or cancellation of the approver's registration.

A seven-day notice is required to the registered building control approver so that it can make any representations to the local authority (for instance to correctly identify the initial notices affected). Following this, the local authority must cancel the initial notice.

## Clause 50: New initial notices

### **Effect**

- 472 This clause amends sections 47, 53 and 55 of the Building Act 1984 and inserts new sections 53B to 53E.
- 473 The amendments to section 53(7) of the Building Act 1984 allows a new initial notice to be given where an initial notice is cancelled by virtue of either disciplinary action taken by Building Safety Regulator, cancellation of initial notice, or where the initial notice lapses. In cases of a cancellation referred to in s53(7)(a) the new initial notice must follow the process in section 53B is followed.
- 474 The process in section 53B requires the registered building control approver, once the initial notice has been accepted, to submit a transfer certificate which must confirm that unfinished work up to the date of the certificate do not contravene any provision of building regulations. Conversely, If the registered building control approver is unable to determine whether the unfinished work meets building regulations, they must set out why in a notice to the person carrying out or intending to carry out the work and provide a copy of that notice to the local authority.
- 475 The registered building control approver must submit a transfer report with any plans, documents or other information related to the confirmation of the transfer certificate.
- 476 This must be submitted to the local authority within the relevant period set out in this section (21 days or such other period prescribed in regulations) or any agreed extension to that period as agreed with the local authority. Under section 53C the local authority must, by notice, accept or reject the certificate and report before the end of the relevant period. This provision also allows the local authority, by notice, to request further information and require the registered building control approver to give to the local authority such information as may be specified in the notice within the relevant period. Where the local authority requests further information, a copy of the notice must also be given to the person carrying out the work.
- 477 The registered building control approver must give the information specified in the notice to the local authority before the end of the period of seven days beginning with the day on which the notice is given, or such other period as may be prescribed in regulations. The registered building control approver can request for this period to be extended with the agreement of the local authority.
- 478 Section 53D sets out the effect of a cancellation of an initial notice where a new initial notice has

been submitted. Section 53D requires the local authority to cancel the initial notice where the registered building control approver does not give the local authority a transfer certificate and transfer report in accordance with section 53B(2) or the local authority rejects the transfer certificate and transfer report in accordance with section 53C.

479 Section 53D also gives powers to the person carrying out the work to cancel the initial notice before the local authority accepts or rejects the transfer certificate and report in accordance with section 53B, i.e. voluntarily withdraw from the transfer process. Where a transfer certificate is rejected, or the developer withdraws from the transfer process then the transfer process ends and any work becomes subject to local authority enforcement and supervision.

480 Section 53E restricts the functions of registered building control approver where an initial notice has been accepted following a change of registered building control approver and a cancellation of initial notice as a result of disciplinary action. During the transfers period the 'transfer process' removes the ability for the registered building control approver to issue plans, a final certificate or an amendment notice.

481 The amendments made to section 47 cross refer to the new provisions and amendments to section 55 ensuring that there is a right of appeal against rejection by a local authority of a transfer certificate or report.

482 Additionally, this clause amends section 53 of the Building Act 1984 to allow the Secretary of State to issue guidance in relation to the new transfer process to assist in the smooth operation of the regime.

### **Effect in Wales**

483 The clause will apply in Wales. Power to issue guidance will rest with Welsh Ministers.

### **Background**

484 Currently if a registered building control approver is unable to undertake their function, their work reverts to local authority supervision unless another initial notice has been accepted. A few Approved Inspectors were unable to secure insurance and went into liquidation in 2019, and the consequential unplanned transfers to the local authorities caused disruptions to clients and some local authorities.

485 Similar circumstances such as this could also arise in the future. The measures in this clause create greater flexibility and capacity for the building control system to address such issues, while satisfying the local authorities that any work by a new registered building control approver is adequate.

#### **Example 1: Person(s) carrying out the work**

A registered building control approver is subject to disciplinary action from the Building Safety Regulator or, in relation to Wales, the Welsh Ministers and as a result loses their ability to continue their function and the initial notice is cancelled.

The person(s) carrying out the work wishes to continue with the private building control route and has seven days to submit a new initial notice with another registered building control approver.

### Example 2: New registered building control approver

The new registered building control approver submits a new initial notice and must carry out necessary activities and verify works.

If satisfied, the new registered building control approver submits a transfer certificate and transfer report to the relevant local authority within 21 days or the prescribed period in regulations. It is able to ask for an extension to the local authority (which they should not unreasonably withhold).

The certificate must have the prescribed information and be accompanied by a transfer report. This transfer certificate and report must be submitted to the new national register.

### Example 3: Local authority

The local authority receives an initial notice from the person(s) carrying out the work and the new registered building control approver.

Once a transfer certificate and accompanying report have been received by the local authority, they can either request more information from the registered building control approver, by notice, which should also go to the person carrying out the work; or they can accept or reject under prescribed grounds in building regulations.

When further information is requested by the local authority, the registered building control approver must provide the specified information within a prescribed period. The local authority will then have a prescribed period of time in which to accept or reject the certificate/report under prescribed grounds. If the registered building control approver fails to provide information within the prescribed time, the local authority must reject the transfer certificate and transfer report and cancel the initial notice. The project will then revert to the relevant local authority building control.

## Clause 51: Information gathering

### **Effect**

486 Clause 51 amends section 53 of the Building Act 1984 in order to enable a local authority to seek information from the person shown on the initial notice as the registered building control approver where it has ceased to supervise a project. This could include requiring a person who is no longer a registered building control approver to provide all its records of supervision of building work. The provision requires that any information provided to the local authority must also be copied to the person carrying out the work. New subsection (4C)(c) also gives the person carrying out the work with a power, by notice, to require other information which a new registered building control approver may need.

487 The clause also amends section 57 of the Building Act 1984 to make it a criminal offence to fail, without a reasonable excuse, to provide the local authority with the information requested.

### **Effect in Wales**

488 The clause will apply in Wales.

### **Proposed use of power**

489 This provision allows the Secretary of State to make regulations to the prescribed period by which the registered building control approver must furnish information to the local authority and the person carrying out or intending to carry out the work, which they may by notice reasonably require.

### **Background**

490 The clause is a new power in response to issues arising from a number of Approved Inspectors that went into administration in 2019. In some cases, administrators have refused to provide information to local authorities and even to the clients of the Approved Inspector because they considered they were under no duty to do so in the Building Act 1984. This clause places the person shown on the initial notice as the registered building control approver (formerly Approved Inspectors) under a new duty to provide all information requested by a local authority whether or not the person is still a registered building control approver and also to the person carrying out or intending to carry out the work.

#### **Example 1: Local authority**

A registered building control approver has its registration suspended and as a result a local authority cancels a number of its initial notices for work in the local authority's area and the work becomes subject to building control supervision by the local authority.

In order to facilitate its building control functions, the local authority may issue a notice to the person shown on the cancelled initial notice as the registered building control approver requiring it to provide the local authority with the relevant information it holds on the building works. A copy of any information provided must also be sent to the person carrying out the work.

#### **Example 2: Person carrying out the work**

A registered building control approver has its initial notice cancelled as it appears to the person carrying out the work that the registered building control approver is no longer willing or able to carry out its functions with respect to any of that work.

As directly interested in the building control information relating to works, the person intending to carry them out is entitled to receive certain information from the former registered building control approver including any information sent to the local authority and any other information they may by notice reasonably require.

## **Clause 52: Information**

### **Effect**

491 Clause 52 amends the Building Act 1984 by inserting sections 56A to 56C.

492 The clause, which mainly applies to England only, repeals the requirement under section 56 of the Building Act 1984 for local authorities to hold local registers of information received from registered building control approvers (although regulations provide for existing information held on the current registers to be saved in their historic form for a long transitional period or uploaded to the new electronic register/portal).

493 Under new section 56A the Building Safety Regulator must establish and maintain a facility which is the national electronic portal.

494 The provision gives the Secretary of State the power to set out in regulations a requirement for a specified person such as the registered building control approver, the person carrying out the work or the local authority to use the national electronic portal to submit information. This power also enables the Secretary of State to authorise specified persons to submit information through other means such as physical documents.

495 Under section 56B the Building Safety Regulator must keep a register of specified information. The register must be maintained in electronic form and ensure that any specified parts of the register are available for inspection by members of the public. In specified circumstances, where a request has been made for copies of documents, these must be made available to members of the public. The information covered will be set out in regulations and is likely to include, but is not limited to, notices, certificates, orders, consents, demands and plans.

496 Under section 56C the Building Safety Regulator is given the power to delegate another body to carry out the function of setting up and running the new electronic portal/register.

497 The clause also makes a number of consequential amendments.

### **Proposed use of this power**

498 Regulations will need to be laid to provide details on the prescribed portal, information and persons in order to implement the clause.

### **Background**

499 The Building Act 1984 provides for registers of documentation in the Approved Inspector system to be held locally by each local authority. In some cases, local authorities have developed their own electronic registers, but in many cases these registers are still maintained in paper form, and it is difficult to access and utilise the information they contain.

500 These provisions are designed to modernise the sections of the Building Act 1984 which facilitate the efficient functioning of the new registered building control approver system and its oversight.

501 Whilst no new information will be added to existing registers once the new national register comes into force, the existing local registers will need to be kept and accessible to the public for a long period or historic information may be uploaded to the electronic register/portal.

#### **Example: Submitting an initial notice**

A registered building control approver and person(s) carrying out the works submit an initial notice under section 47 of the Building Act 1984. They will submit the prescribed information via the new electronic portal set up by the Building Safety Regulator. The local authority will be notified immediately of the submission by the electronic portal and can accept or reject the initial notice via the electronic portal, or the initial notice might be deemed to be accepted by

virtue of the prescribed time period elapsing (in section 47 of the Building Act 1984).

If the local authority accepts the initial notice with conditions or rejects it under prescribed grounds, it will be required to file this acceptance or rejection via the electronic portal.

## Miscellaneous and general

### Clause 53: Functions under Part 3 of Building Act 1984

#### **Effect**

- 502 Clause 53 inserts new section 90A into the Building Act 1984 to provide powers for the Secretary of State, by regulations, to allocate responsibilities in respect of functions provided to local authorities in Part 3 of the Building Act 1984 between the Building Safety Regulator and local authorities.
- 503 Subsections (2) and (3) of new section 90A allow for notification requirements to be imposed on the regulator and/or local authorities. It is expected that this power will be used to require that, where the local authority retains the function in respect of higher-risk buildings, it must notify the regulator before taking action, and vice versa.
- 504 Regulations will be subject to the affirmative procedure (see new section 120A in Schedule 5).
- 505 This clause applies to England only.

#### **Background**

- 506 Part 3 of the Building Act 1984 places a number of functions on local authorities in relation to buildings. These include the ability to issue a notice to the building owner requiring work to be undertaken on the building relating to matters such as drains, sanitary conveniences, provision of food storage, and means of escape. Functions are also placed on local authorities to enable them to require action to be taken, or take action themselves in relation to dangerous, defective and dilapidated buildings. Part 3 also provides functions for local authorities in relation to demolitions of buildings.

#### **Example**

There is a potential overlap in respect of higher-risk buildings between some of the functions placed on local authorities under Part 3 of the Building Act 1984 and the Building Safety Regulator's regulatory role for higher-risk buildings in occupation. A specific example is the ability under section 72 of the Building Act 1984 for a local authority to issue a notice requiring extra means of escape from the building in a fire. For higher-risk buildings, the Accountable Person will have needed to demonstrate the adequacy of the means of escape in the safety case for the building.

To avoid any confusion and potential duplication of regulation, therefore, the Secretary of State will be able to allocate functions under Part 3 for higher-risk buildings formally to the Building Safety Regulator. Alternatively, those

functions may continue to rest with the local authority or be exercised jointly. This approach may be needed for matters where there are links with local authority responsibilities under the Housing Act 2004 or environmental health legislation. It will be important that where the local authority retains responsibility for certain matters, it informs the Building Safety Regulator if it intends to exercise the relevant function(s) so that there is effective coordination between the two.

#### Clause 54: Minor and consequential amendments

507 The provisions of Part 3 of the Bill involve changes to the Building Act 1984. Minor and consequential amendments which flow from those changes are set out in Schedule 5.

508 See the explanatory note for Schedule 5 for effects in Wales.

#### Clause 55: Appeals

##### **Effect**

509 Clause 55 relates to Schedule 6, which makes provision for changes to the appeals process under the Building Act 1984.

510 It sets out that that Schedule 6 to this Bill contains amendments to provisions in the Building Act 1984 where appeals and other decisions currently sit with the Secretary of State or the magistrates' court. These are amended to sit with the Building Safety Regulator and First-tier Tribunal respectively.

511 The Schedule also makes provision for a right of appeal against a local authority decision not to consider an application for building control approval or initial notice where it relates to higher-risk building work.

##### **Effect in Wales**

512 See the explanatory notes to Schedule 6 for the effect in Wales.

##### **Background**

513 The Building Safety Regulator's functions will include overseeing the safety and performance of all buildings. The Building Safety Regulator will be overseeing the performance of other building control bodies (local authorities and Approved Inspectors), so appeals should go to it, rather than the Secretary of State.

514 Appeals on building control matters have historically been heard in the magistrates' court, but they are civil issues. The Bill creates routes of appeal to the First-tier Tribunal in England.

##### **Example**

A developer wishes to appeal a decision made by the Building Safety Regulator on a building control matter in England; this will be heard by the First-tier Tribunal rather than the Secretary of State or the magistrates' court. This will create a level of expertise within the First-tier Tribunal in England to deal with building safety hearings, which previously would have been heard by a local magistrate who might hear no more than one construction related case per year.

Further notes are provided for this section in the explanatory notes to Schedule 6.

## Clause 56: Fees and charges

### **Effect**

- 515 Clause 56 inserts new section 105B into the Building Act 1984 to allow, in England, the Secretary of State to make regulations to enable fees and charges to be levied by both the Building Safety Regulator and local authorities in connection with the exercise of their respective functions under the Building Act 1984 and regulations made under it.
- 516 The power allows for regulations to prescribe the levels of fees and charges and to make provisions for schemes under which charges are fixed; the principles to be followed in setting up schemes; and to enable different levels of fees and charges to be levied for different purposes.

### **Effect in Wales**

- 517 The clause applies in Wales where Welsh Ministers will, as the “appropriate national authority” have powers to prescribe fee and charge levels chargeable by Welsh Ministers or Welsh local authorities for Building Act 1984 functions.

### **Background**

- 518 Paragraphs 5 and 9 of Schedule 1 to the Building Act 1984 provide powers for building regulations to be made to enable local authorities to make schemes to set charges for functions which they undertake under the Building Regulations 2010. These powers have been used to make the Building (Local Authority Charges) Regulations 2010 (the “Charging Regulations”).
- 519 New section 105B of the Building Act 1984 extends these powers to cover all functions exercised by local authorities in England and Wales, the Building Safety Regulator in England, and the Welsh Ministers in Wales, under the Building Act 1984 and regulations made under it. The power in new section 105B enables levels of fees and charges to be prescribed in the regulations or to be fixed in schemes drawn up by local authorities, the Welsh Ministers or the Building Safety Regulator in accordance with principles set out in the regulations. This will allow the relevant authority to set levels of fees and charges to take account of their different circumstances. Fees and charges set in schemes will need to adhere to the principles of Managing Public Money (in England) and Managing Welsh Public Money (in Wales). Regulations will be subject to the negative procedure, as are the current Charging Regulations.
- 520 Paragraph 82 of Schedule 5 to this Bill consequentially repeals paragraphs 5 and 9 of Schedule 1 to the Building Act 1984.

### **Example**

The regulations made using this power will allow local authority charges to include not only specified building regulations functions but all functions they perform under the Building Act 1984 and building regulations. For example, local authorities have functions related to demolitions under Part 3 of the Act, including issuing demolition notices, for which currently they cannot levy charges. Extending the power will enable activities such as this to be covered by charging schemes.

The Building Safety Regulator will have a significant number of functions in England under the Building Act 1984 and regulations made under it, including acting as building control authority for higher-risk buildings and certain other buildings, and overseeing the performance and competence of building control professionals. The Independent Review recommended that the Building Safety Regulator for higher-risk buildings should be funded through a full cost recovery approach. It is therefore expected that the Building Safety Regulator will charge fees for its activities as a building control authority, and will charge fees where appropriate for other functions it performs under the Building Act 1984 (for instance, applications for registration as a registered building inspector).

## Clause 57: Levy on applications for building control approval in respect of higher-risk buildings

### **Effect**

- 521 Clause 57 amends the Building Act 1984 to confer powers on the Secretary of State to impose a new higher-risk building levy in England, that will contribute to the government's costs of remediating building safety defects. This will apply to developers making an application to the Building Safety Regulator for building control approval, the new "Gateway two" process introduced in building regulations.
- 522 Gateway two will be at the current deposit of plans stage of building control. It will require the submission of a building control application to the Building Safety Regulator, and building control approval to be obtained before building work can commence. The more stringent regime will apply to buildings with at least two residential units, care homes and hospitals of 18 metres or more in height, or at least 7 storeys, whichever is reached first, during the design and construction phase. Developments that will pass through Gateway two are those that result in the creation of new higher-risk buildings in scope, for example new builds and conversions such as change of use.
- 523 The levy will be paid to the Secretary of State, or a body designated by the Secretary of State to do this. Levy funds may also be used for the purpose of administering the levy.
- 524 The design of the levy will be consulted on in the summer and will be implemented through regulations. This will include the basis for the levy and rates; who must pay and when; the consequences of non-payment; refunds; and disputes. Provision is made to allow the regulator to withhold regulatory approvals unless they are notified that the levy has been paid.

### **Background**

- 525 This is a new levy on developers, contributing to the government's investment in building safety to protect leaseholders from unaffordable costs.
- 526 There are three "Gateways" under the new building safety regime in England: Planning gateway one – when planning permission is sought; Gateway two – building control approval prior to building work starting; and Gateway three – completion and handover, before a building is occupied. Gateway two will occur prior to the beginning of construction work on higher-risk buildings, and act as a 'hard stop' where construction cannot begin until the "Building Safety Regulator approves the building control application. Sanctions for failure to pay the levy will be

defined in regulations. This will result in the Gateway two application not being signed off by the Building Safety Regulator.

527 A levy at the Planning gateway one stage is likely to deter speculative planning applications and would be payable on developments that may not be built. Gateway two was seen as the best time to charge a levy as it was certain that construction would start. By the Gateway three stage, the development would be ready for occupation and processing a levy may add delays to occupation.

### Example

A developer of a building in scope of the higher risk regime makes an application to the regulator for Gateway two approval. At the same time, they self-assess their levy liability and make the payment to the designated levy administrator, along with providing the necessary supporting information. The calculation is checked by the levy administrator, which confirms that payment has been made to the regulator. The regulator may then grant building control approval, subject to their other checks.

## PART 4: Higher-Risk Buildings

### Introduction

#### Clause 58: Overview of Part

##### Effect

528 Clause 58 is intended to assist the reader of the Bill to understand the provisions that follow. It sets out the main elements of Part 4 of the Bill. This clause is not intended to have legal effect; rather it guides the reader through the remaining provisions of this part of the Bill, which are intended to have legal effect.

##### Background

529 This is a new provision.

### Meaning of “building safety risk”

#### Clause 59: Meaning of “building safety risk”

##### Effect

530 The new regulatory regime will regulate ‘building safety risks’ in higher-risk buildings. These are the risks that the Accountable Person will manage in occupation via the safety case, in order to prevent a major incident (serious injury or death to a significant number of people).

531 Clause 59 defines those ‘building safety risks’ as risks to the safety of persons in or about buildings with regards to risks arising from the building resulting from the occurrence of: fire spread, structural failure, and any other risk that may be prescribed by regulations in the future.

532 This clause provides a power for the Secretary of State to define, in regulations, new ‘building safety risks’ which, once prescribed, would then need to be regulated in higher-risk buildings. The

clause will therefore allow the future scope of the regulatory regime to remain flexible should evidence emerge, for example, that another risk arising from a building has the potential to cause a major incident (serious injury or death to a significant number of people).

- 533 The clause is drafted to capture risks inside and outside the building such as fire spreading on the external wall of a building, but is limited to risks that are associated with the building and/or arising from the building itself. Risks are also limited to those affecting people in and about buildings.
- 534 The power to prescribe a new building safety risk will be by regulations subject to the affirmative procedure in both Houses of Parliament. Before making any regulations prescribing new building safety risks, the Secretary of State must consult with the Building Safety Regulator. The Secretary of State must also consult any persons that they consider appropriate.
- 535 In addition to the requirement to consult in clause 59, the Secretary of State can ask the Building Safety Regulator to advise them as to whether a particular new building safety risk should be prescribed and the Building Safety Regulator is obliged to provide such advice on request (clause 61). Alternatively, the Building Safety Regulator may proactively recommend to the Secretary of State to specify a new building safety risk (clause 60).
- 536 In prescribing a new building safety risk, if the Secretary of State is giving effect to regulatory advice or recommendation the requirement to consult the Building Safety Regulator is switched off, although the Secretary of State still must consult such other persons as they consider appropriate.
- 537 Clause 5 will support this function of the Building Safety Regulator and requires the Building Safety Regulator to keep the safety of people in and about buildings in relation to risks arising from buildings under review.
- 538 Once prescribed, the Secretary of State will have the power, by regulations, to remove a prescribed risk from the definition of building safety risks. This power will apply only to prescribed risks and not to the risks expressly set out on the face of the Bill: fire spread and structural failure – these will remain at the heart of the building safety regime.

### **Background**

- 539 This is a new provision.
- 540 The Independent Review focused on fire and structural safety risks, and recommended these were the initial scope for building safety risks in the new regime.
- 541 The Government sought research from the Health and Safety Executive in relation to risks that are considered to be catastrophic to verify our approach and focus. The conclusions of this research are that the major accident hazards in scope for safety management in a higher-risk building would largely be rapid onset escalating fire, structural, or explosion events. Explosion events can trigger a rapid onset escalating fire or structural event.

#### **Example: Prescribing a new risk**

The following is a hypothetical example.

After the new occupation regime has been operating for two years, the Secretary of State may feel that changing weather systems mean high winds pose a risk to windows of higher-risk buildings which does not relate to the structural

integrity of the building.

If the Secretary of State comes to this view, they must consult the Building Safety Regulator before making regulations to prescribe high winds as a new building safety risk. The Building Safety Regulator is under a duty to provide advice if requested to do so and may proactively recommend that high winds should be prescribed as a new building safety risk. The Secretary of State will also consult other appropriate bodies – in this scenario this might include structural engineers, environmental and weather experts.

If, following a consultation on including a new risk, the Secretary of State decides to add the new risk, regulations will be laid in Parliament under the affirmative procedure. Subject to Parliament's approval, the occupation regime will then regulate for risk of fire spread, structural integrity and risk of high winds in higher-risk buildings.

## Clause 60: Recommendations about regulations under section 59; and Clause 61: Advice about regulations under section 59

### **Effect**

- 542 The new regulatory regime will regulate building safety risks in higher-risk buildings – building safety risks are defined in clause 59. The Bill provides a power for the Secretary of State to prescribe new building safety risks in clause 59. This may be done only following consultation with the Building Safety Regulator and appropriate persons.
- 543 Clause 60 sets out that the Building Safety Regulator may proactively recommend to the Secretary of State that a new 'building safety risk' should be prescribed. Before making a recommendation, the Building Safety Regulator must be satisfied that if a new 'building safety risk' occurred in a higher-risk building or a particular type of higher-risk building, it would have the potential to cause a major incident (serious injury or death for a significant number of people).
- 544 The Building Safety Regulator may also recommend to the Secretary of State to specify a new 'building safety risk' and a new class of higher-risk building simultaneously. Before making such a recommendation, the Building Safety Regulator must be satisfied that if the new building safety risk occurred in the new class of higher-risk building it would have the potential to cause a major incident (serious injury or death to a significant number of people), that the risk of it occurring in the new class of higher-risk building is higher than in other buildings, and that the new occupation regulatory regime should apply to the new class of 'higher-risk building'.
- 545 The Building Safety Regulator may also recommend the removal of a previously prescribed building safety risk on the grounds that it would not cause a major incident.
- 546 When making a recommendation, the Building Safety Regulator must include details of the issues that have been considered to reach the recommendation.
- 547 The Building Safety Regulator does not have the power to recommend that fire spread or structural failure is removed from the definition of building safety risks.
- 548 Supplementary to clause 60 and clause 59 is clause 61. In addition to the requirement to consult in clause 60, the Secretary of State can ask the Building Safety Regulator to advise them as to whether

a particular new 'building safety risk' should be prescribed. The Building Safety Regulator is obliged to provide the requested advice.

549 Clause 5 will support this function of the Building Safety Regulator and requires the Building Safety Regulator to keep the safety of people in and about buildings in relation to risks arising from buildings under review.

550 If the Secretary of State does not follow the recommendation of the Building Safety Regulator under clause 60, then they must publish a document which sets out the Regulator's recommendation, the Secretary of State's decision not to follow the recommendation and the reasons for that decision.

### **Background**

551 These are new provisions.

### **Meaning of "higher-risk building"**

[Clause 62: Meaning of "higher-risk building" and Clause 63: Regulations under section 62: procedure and Clause 64: Regulations under section 62: additional procedure in certain cases](#)

### **Effect**

552 The new regulatory regime will regulate building safety risks in 'higher-risk buildings' in England. Clause 62 defines the 'higher-risk buildings', which will be regulated by the new occupation regime, as at least 18 metres in height or having at least 7 storeys and containing at least two residential units. Residential units are either a dwelling or any other unit of living accommodation, for example a room for a residential purpose where basic amenities, such as cooking facilities, a toilet and personal washing facilities are shared with others in the building.

553 Clause 62 gives the Secretary of State the power, by regulations, to supplement this definition (subsections (2) and (3)), for example by defining building, storey and technical details such as the method for measuring the height of a building. Subsection (4) provides that the definition of 'building' in regulations may include other structures, erections or movable objects. The ability to have a broad definition aligns with section 121 of the Building Act 1984. Regulations made under this power are subject to the negative resolution procedure.

554 Clause 62 also gives the Secretary of State the power (used in the way described in (3)(c), by regulations, to exclude classifications of building from the definition of 'higher-risk building'. This means a building may be caught by the definition in this clause but then excluded through regulations made under this power and therefore not defined as a 'higher-risk building'. Regulations made under this power are subject to the affirmative resolution procedure, i.e. they must be laid in draft, debated and approved in both Houses of Parliament before they can be made.

555 Clause 62 gives the Secretary of State the power to amend clause 62, apart from subclauses (2) and (5). This power could be used to amend the definition of 'higher-risk building'. Regulations made under this power are subject to the affirmative resolution procedure, i.e. they must be laid in draft, debated and approved in both Houses of Parliament before they can be made.

556 When making regulations to amend the definition of 'higher-risk building', this can be done by reference to a building's size, design, use, purpose or other characteristic (clause 145).

- 557 Clause 63 stipulates that the Secretary of State must consult the Building Safety Regulator and any other appropriate persons before making regulations. The clause also states that the Secretary of State does not need to repeat this consultation with the Building Safety Regulator if they have received a recommendation or requested advice.
- 558 Clause 64 further stipulates that when the Secretary of State proposes to make regulations which would result in a description of building being added to the definition of 'higher-risk building', and therefore subject to the new occupation regulatory regime, they must have received a recommendation from the Regulator or ask the Regulator for advice and they must undertake and publish a cost benefit analysis. If the costs or benefits cannot be reasonably or practicably estimated, then the Secretary of State must provide an explanation of this.
- 559 In addition to the requirements in clauses 63 and 64, the Secretary of State can ask the Building Safety Regulator to advise them as to whether a description of building should be removed from the definition of 'higher-risk buildings'. The Building Safety Regulator is obliged to provide such advice on request (clause 67).
- 560 Clause 66 allows the Building Safety Regulator to proactively recommend to the Secretary of State that a description of buildings should be added to the definition of 'higher-risk buildings' or an existing type of higher-risk building should be removed from the definition. When making recommendations to add to the definition, the Building Safety Regulator must provide the Secretary of State with a statement of the issues considered.

### **Proposed use of power**

- 561 At the start of the new regulatory regime, it is proposed to supplement the definition of 'higher-risk building' as laid out in the draft Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations which can be found at <https://www.gov.uk/government/collections/building-safety-bill>.

### **Background**

- 562 This is a new provision.
- 563 The Independent Review identified that it is important to ensure that the Government can respond in the future, where necessary, to amend the definition of 'higher-risk buildings' in light of either critical new information emerging or experience of operating the new regime.
- 564 Following pre-legislative scrutiny, the Housing, Communities and Local Government Committee recommended including the definition of 'higher-risk buildings' within the Bill, rather than in regulations.

#### **Example**

The following example is purely hypothetical.

After the new regime has been operating for two years the Secretary of State may decide that consideration is needed as to whether single storey premises in areas of high flood risk should be higher-risk buildings because of a concern about structural failure following recent flooding incidents.

If the Secretary of State came to this view, they must request advice from the Building Safety Regulator. The Building Safety Regulator must consider whether single storey premises in areas of high flood risk meet the three conditions

specified in clause 67(2).

In this hypothetical example, the Regulator considers the conditions are met. The Building Safety Regulator must also consider whether the application of Part 4 of this bill should be modified if it is applied to single storey premises in areas of high flood risk. The Regulator does not consider that the application of part 4 should be modified. The Regulator must then make a recommendation to the Secretary of State to amend the definition of a 'higher-risk building' and provide a statement of the issues it considered in coming to that recommendation.

Having considered the recommendation, the Secretary of State may minded to agree and make regulations to amend the definition of 'higher-risk buildings'. They must then consult any other persons the Secretary of State considers appropriate and undertake a cost benefit analysis, if they have not already done so whilst requesting advice from the Regulator. Having considered the recommendation, the representations made and the cost benefit analysis, the Secretary of State will decide whether to amend the definition of 'higher-risk building'.

If the Minister chooses to make the amendment, the regulations will be laid in Parliament using the affirmative procedure and be accompanied by the requisite documentation. If the Secretary of State chooses not to make the amendment, then the Secretary of State must publish a document setting out the Regulator's recommendation, their decision not to implement it and the reasons for their decision.

## Clause 65: Modification of Part in relation to certain kinds of higher-risk building

### **Effect**

- 565 The new regulatory regime in Part 4 of the Bill will regulate building safety risks in higher-risk buildings. Clause 62 provides for the definition of 'higher-risk building' in Part 4 of the Bill to be amended by regulations.
- 566 Clause 65 provides some further flexibility. It gives the Secretary of State the power to modify Part 4 of this Bill in relation to particular categories of higher-risk buildings. This power could be used at the same time as bringing a new type of building within the definition of higher-risk building or could be used in relation to an existing type of higher-risk building. The power is needed as there might be cases where it is not appropriate to apply every provision set out in Part 4 of this Bill to all types of higher-risk buildings, and in such cases the Secretary of State may decide to modify how Part 4 applies to that type of building.
- 567 Additionally, when providing advice under clause 67 or making its recommendation under clause 66 regarding the definition of 'higher-risk building', the Building Safety Regulator must also consider whether it is appropriate to make modifications to how Part 4 should apply to that description of building, when putting forward its advice or recommendation.
- 568 This power to modify parts of the regime applies with respect to the in-occupation regime only. Amendments to the Building Act 1984 already provide for a power to have different provision in

building regulations for higher-risk buildings. This includes applying differing requirements for specific types of higher-risk buildings where appropriate.

569 The power to amend the definition of 'higher-risk building' by regulations (clause 62) and the power to modify the application of the regime to higher-risk buildings (clause 65) will both be subject to the affirmative procedure.

570 Before making any new regulations under this clause the Secretary of State must consult with the Building Safety Regulator, as well as any other persons the Secretary of State considers appropriate.

### **Proposed use of power**

571 See clause 62 above for the definition of 'higher-risk building' in relation to Part 4 of this Bill. It is not proposed to make any modifications under clause 65 to the regulatory regime for the types of building falling within this definition.

### **Background**

572 This is a new provision.

#### **Example**

The following example is purely hypothetical.

After the occupation regime has been operating for two years, the Secretary of State may feel that it is not appropriate for the resident engagement requirements to apply to higher-risk buildings which consist of boarding school accommodation which only houses minors, given the nature of the occupants.

If the Secretary of State comes to this view, they must consult the Building Safety Regulator and other appropriate persons before making regulations.

Having considered the consultation responses, the Secretary of State will then decide whether or not to make the regulations making the modification.

## **Clause 66: Recommendations about definition of "higher-risk building" etc**

### **Effect**

573 The new in occupation regime will regulate building safety risks in higher-risk buildings. Clause 62 sets out the definition of 'higher-risk building' for Part 4 of this Bill.

574 Clause 66 provides that the Building Safety Regulator must recommend to the Secretary of State that a particular description of buildings should be subject to regulation under the regime if the conditions of the clause are met. The conditions are: the Building Safety Regulator must be of the view that building safety risks in the type of building in question are higher than in buildings in general, that if the building safety risks arose in the type of building in question it could cause a major incident (serious injury or death to a significant number of people), and that the Regulator considers it appropriate for the regulatory regime to apply.

575 In making recommendations, the Building Safety Regulator must also make a recommendation as to whether the application of Part 4 should be modified for the description of building which it has recommended should come into scope of the regulatory regime (using the power in clause 65).

This is because there might be cases where it is not appropriate to apply every provision of the regime in occupation to a certain description of building, and so when making its recommendation about bringing a description of building into scope of the regulatory regime, the Building Safety Regulator must also consider which provisions it thinks are appropriate to apply to that description of building.

576 When making a recommendation to add a description of building to the definition of ‘higher-risk building’, the Building Safety Regulator must provide the Secretary of State with a statement of the issues considered.

577 If the Secretary of State chooses not to follow a recommendation of the Building Safety Regulator, then they must publish a document which sets out the Regulator’s recommendation, the Secretary of State’s decision not to follow the recommendation, and the reasons for that decision.

578 The Building Safety Regulator may also recommend the removal of a description of higher-risk building from the regulatory regime.

579 Clause 5 will support this function of the Building Safety Regulator as it requires the Building Safety Regulator to keep the safety of people in and about buildings in relation to risks arising from buildings under review.

580 The Building Safety Regulator would use the powers in clause 66 if, following the commencement of the regulatory regime, the Building Safety Regulator independently considers, either through evidence or experience of operating the regime, it needs to make recommendations to the Secretary of State to amend the definition of ‘higher-risk building’, because the tests in subsection (1) are met.

### **Background**

581 This is a new provision.

#### **Example**

The following is a hypothetical example.

Two years after the regime comes into force, with experience of operating the regime, the Building Safety Regulator may decide that consideration is needed as to whether single-storey premises in areas of high flood risk should be higher-risk buildings because of a concern about structural failure following recent flooding incidents.

In order to make a recommendation to the Secretary of State, the Building Safety Regulator must consider that the building safety risks in relation to this type of building are higher than in buildings in general and that if the risk materialised it has the potential to cause a major incident. If that is the case, and if the Regulator thinks it appropriate, the Regulator must recommend to the Secretary of State that single-storey premises in areas of high flood risk, should be considered higher-risk buildings.

In this example the Building Safety Regulator must also consider whether Part 4 should apply in its entirety to single-storey premises in areas of high flood risk, or whether it should be modified or disapplied in part.

The Secretary of State would then consider this recommendation. In this example, if the Secretary of State agreed with the recommendation, they would then have to consult other appropriate persons and undertake and publish a cost benefit analysis. Following that, if the Secretary of State chooses to make regulations under clause 62 to bring single-storey premises in areas of high flood risk into scope of the in-occupation elements of the regulatory regime, the regulations would be subject to the affirmative resolution procedure in both Houses of Parliament. Subject to Parliament's approval, this type of building would then be regulated by the Building Safety Regulator subject to a suitable transition period.

If the Secretary of State disagreed with the Building Safety Regulator and chose not to prescribe single-storey premises in areas of high flood risk as higher-risk buildings, the Secretary of State would be required to publish a document setting out the original recommendation, and stating both their decision not to follow the recommendation and reasons why.

### Clause 67: Advice about definition of "higher-risk building" etc

#### **Effect**

- 582 The new in occupation regulatory regime will regulate building safety risks in higher-risk buildings in England. The Secretary of State can ask the Building Safety Regulator to advise them as to whether a type of building should become a higher-risk building, or a type of building should be removed from that definition. The Building Safety Regulator is obliged to provide such advice on request.
- 583 Clause 67 sets out that if the Secretary of State asks the Building Safety Regulator to provide advice as to whether a new description of building should be added to the definition of 'higher-risk building', the Regulator must consider whether the conditions at subsection (2) (a) - (c) of the clause are met. The conditions are: the Building Safety Regulator must be of the view that building safety risks in the type of building in question are higher than in buildings in general, that if the building safety risks arose in the type of building in question it could cause a major incident (serious injury or death to a significant number of people) and that the Regulator considers it appropriate for the regulatory regime to apply.
- 584 If the Building Safety Regulator considers the conditions are met, it must consider which parts of the occupation regulatory regime should apply. The Regulator must then recommend to the Secretary of State that the new description of building is added to the definition of 'higher-risk building', specify whether Part 4 should be modified and provide a statement of the issues it considered alongside the recommendation.
- 585 If the Building Safety Regulator considers the conditions are not met, it must provide advice that the new description of building should not be added to the definition of 'higher-risk building', and provide a statement of the issues it considered.
- 586 Clause 67 also sets out that the Building Safety Regulator must provide advice as to whether a description of building should be removed from the definition of 'higher-risk building', if the Secretary of State requests it.
- 587 Clause 62 provides for the Secretary of State to amend the definition of higher-risk buildings in

regulations. The power is flexible because clause 65 gives the Secretary of State a power, by regulations, to apply only parts of the in occupation regulatory regime to descriptions of higher-risk buildings.

588 Clause 5 will support this function of the Building Safety Regulator as it requires the Building Safety Regulator to keep the safety of people in and about buildings in relation to risks arising from buildings under review.

### **Background**

589 This is a new provision.

590 The Independent Review identified that it is important to ensure that the Government can respond quickly in the future, where necessary, to broaden the definition of higher-risk buildings in light of either critical new information emerging or experience of operating the new regime.

591 The Building Safety Regulator will oversee the building safety regulatory system and will analyse data from the operating regime to be able to fulfil this duty.

#### **Example**

The following is a hypothetical example.

After the new occupation regime has been operating for two years, the Secretary of State may decide that consideration is needed as to whether single-storey premises in areas of high flood risk should be higher-risk buildings because of a concern about structural failure following recent flooding incidents. To understand more about the issue the Secretary of State could formally request advice from the Building Safety Regulator on inclusion of this type of building in the definition of higher-risk buildings.

The Building Safety Regulator would be required to provide the Secretary of State with advice.

If the Regulator considered the three conditions set out in clause 67, subsections (2) (a) - (c) were met, it would also be required to explain whether any modifications should be made to the regulatory regime, as set in in Part 4 of this Bill, in relation to its application to the proposed new type of building.

Following this, the Regulator must recommend to the Secretary of State that single-storey premises in areas of high flood risk should be higher-risk buildings, whether any modifications to the regulatory regime should be made and provide the Secretary of State a statement of the issues it considered in coming to that recommendation.

Where the Secretary of State is proposing to make regulations to give effect to the advice of the Building Safety Regulator then the Secretary of State would not be required to re-consult the Building Safety Regulator, but would have to consult such other persons as the Secretary of State considers appropriate. The Secretary of State must also undertake and publish a cost benefit analysis.

If the Secretary of State chooses to make the amendment, the regulations will be

laid in Parliament using the affirmative procedure. If the Secretary of State chooses not to make the amendment, then they must publish a document setting out the Regulator’s recommendation, their decision not to implement it and the reasons for their decision.

## Meaning of “Accountable Person” and other key definitions

### Clause 68: Meaning of “occupied” higher risk building etc

#### Effect

592 The majority of this part of the regulatory regime will apply only to buildings which meet the definition of ‘higher-risk buildings’ (clause 62) which are “occupied”. The clause defines the meaning of “occupied” and requires that the building is in multi-occupation by residents of two or more residential units.

593 The clause also creates a power for the Secretary of State to amend the definition of “occupied” and the definition of a “resident” of a higher-risk building. There is also a power to define the meaning of being a ‘resident’ of a residential unit. These powers ensure that the regime could be adapted in the future.

#### Background

594 This is a new provision.

595 The Independent Review identified that there should be a clear dutyholder during occupation who will have statutory obligations to maintain the fire and structural safety of the building. These will take effect on occupation of a building in scope.

### Clause 69: Meaning of “Accountable Person” etc

#### Effect

596 Clause 69 sets out the definition of an Accountable Person. For the purposes of this part of the Bill the Accountable Person is the entity responsible for meeting the statutory obligations for occupied higher-risk buildings.

597 Subsection (1) states that the Accountable Person is the person who either has the legal estate in possession of, or is under a relevant repairing obligation, for any part of the of the common parts of the building.

598 Subsection (2) sets out the test identifying the Accountable Persons where there are two or more persons with legal interests in a building in scope. This is formulated on the legal estate in possession in relation to the common parts and the lease arrangements in relation to the repair and maintenance of those common parts. It therefore makes provision for management bodies to be defined as Accountable Persons in circumstances where the lease sets out repair and maintenance obligation on that management body.

599 The clause defines common parts in relation to this section and includes the structure and exterior of the building and any part of the building which is provided for the use of the residents in the building, except for those demised to individual dwellings.

600 It also clarifies in accordance with clause 122 references to a lease as being:

- a lease granted for a term certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture; or
- a lease for a term fixed by law under a grant with a covenant or obligation for perpetual renewal, other than a lease by sub-demise from one which is not a long lease.

601 Subsection (3) sets out that the parts of a higher-risk building for which an Accountable Person is responsible will be determined in accordance with regulations. This will provide clarity to Accountable persons about the areas that fall under their remit for the purposes of fulfilling their duties under the Bill and to all other entities affected by the Bill who will be able to work out (where there are multiple Accountable Persons) where responsibility lies.

602 Subsection (5) gives powers to the Secretary of State to amend the definition of an Accountable Person by way of regulations.

### **Background**

603 This is a new provision.

604 The Independent Review identified that there should be a clear dutyholder during occupation who can be held to account and will have statutory obligations to maintain the fire and structural safety of the building. Building ownership in the UK is complex and the definition has been devised to ensure that the right person is defined as the Accountable Person according to their obligations that have been demised under concepts in property law.

#### **Example**

From commencement of this part of the Act, the Accountable Person(s) will be defined as such and therefore responsible for the statutory obligations under the building safety regime. This will in the main be the freeholder of the property, but in the case where the interest of the building has been demised to other lessees, and they retain the obligation to repair and maintain a common part as defined in this clause, the definition will also make those persons Accountable Persons. This will include individuals, investment companies, local authorities and housing associations. In the future the Government may take the decision to widen the scope of the regime and the Secretary of State will, by regulations change the definition to identify the appropriate Accountable Person for those new buildings brought into the scope of the Building Safety Regime.

### **Clause 70: Meaning of “principal accountable person”**

#### **Effect**

605 Clause 70 sets out the definition of a Principal Accountable Person. For the purposes of this part of the Bill they will be responsible for meeting the statutory obligations for occupied higher-risk buildings where there is more than one Accountable Person in a higher-risk building or where they are the sole Accountable Person.

606 There are therefore only two options for persons who may fall under a definition of a Principal

Accountable Person for a higher-risk building and they are either; when they are the only Accountable Person in the building or (where there is more than one Accountable Person) when they are the entity that is the owner of the structure and exterior of the building. There is an exception for buildings demised of a single dwelling and premises to be occupied for the purposes of a business.

607 This clause is linked to clause 118 as each Accountable Person must cooperate and coordinate with every other Accountable Person in the building. In addition, under clause 89 the Secretary of State will put into regulations a requirement for each Accountable Person for the building who is aware of a lack of cooperation from another Accountable Person, to have their own duty to report such lack of cooperation to the Building Safety Regulator, making it an offence not to cooperate.

### **Background**

608 This is a new provision.

609 The Independent Review identified that there should be a clearly defined dutyholder during occupation who can be held to account and will have statutory obligations to maintain the fire and structural safety of the building. Building ownership in the UK is complex and the definition of a Principal Accountable Person will ensure that there is a lead Accountable Person specifically responsible for various obligations under the regime including applying for registration, appointing the Building Safety Manager and preparing the Safety Case Report, avoiding the possibility of any relevant parties being able to absolve themselves of obligations and duties under this part.

#### **Example**

In a building with a single Accountable Person, that Accountable Person will be responsible for all the Accountable Person duties in Part 4.

In a building where there is a freeholder which retains repairing obligations for the exterior and structure of the property, and there is a superior leaseholder which retains repairing obligations for all the other 'inner' common parts, both entities will be Accountable Persons and the freeholder will be the Principal Accountable Person.

In a building where there is a freeholder which does not retain repairing obligations, a superior leaseholder with repairing obligations for the exterior and structure of the property and a management company where every lease in the property states that the management company is responsible for the remainder of the common parts, the superior leaseholder and the management company will be Accountable Persons. The superior leaseholder will be the Principal Accountable Person.

### **Clause 71: Determinations by the Tribunal**

#### **Effect**

610 Clause 71 sets out that an 'interested party' may apply to the tribunal for a determination as to who is the Accountable Person or are the Accountable Persons for the building. Where a building has more than one Accountable Person a determination can be sought by the tribunal regarding

who the Principal Accountable Person for the building is, and the part of the building for which any accountable person is responsible.

- 611 Subsection (2) sets out that where an application is made for the tribunal to determine who the Principal Accountable Person is, and it appears to the tribunal that there is more than one Accountable Person who holds a legal estate in the relevant parts of the structure and exterior of the building (and therefore satisfies the definition of the Principal Accountable Person in clause 70), the tribunal will decide as it considers appropriate, who the Principal Accountable Person for the building is.
- 612 Subsection (3) defines an interested person, meaning a person who can apply to the tribunal, as being either the regulator or a person who holds a legal estate in any part of the building.

### **Background**

- 613 This is a new provision.
- 614 The Independent Review identified that there should be a clearly defined dutyholder during occupation who can be held to account and will have statutory obligations to maintain the fire and structural safety of the building. This clause provides certainty through the tribunal of where accountability lies in cases where the Accountable Person or Principal Accountable Person for a building is unclear.

#### **Example**

If no one is clearly identified as the Principal Accountable Person or refuses to acknowledge that they are the Principal Accountable Person, the Regulator can apply to the tribunal for a determination as to who meets the statutory test for being Principal Accountable Person in the building. The tribunal's determination would bind that person to act as the Principal Accountable Person and be liable for the obligations on a Principal Accountable Person. There may also be complex questions from a person who holds a legal estate in any part of the building as to who the Accountable Person is; this clause can be invoked in such circumstances to allow the tribunal to decide and resolve complex issues as early as possible.

## **Registration and certificates**

### **Clause 72: Occupation: registration requirement**

#### **Effect**

- 615 The Principal Accountable Person, as defined in clause 70, must ensure that the higher-risk building is registered before it becomes occupied and commits an offence if they fail to do so. Subsection (2) sets out that is a defence for a Principal Accountable Person charged with an offence under this section to prove that they had a reasonable excuse for failing to register the building.
- 616 Subsection (3) sets out the maximum penalty for the criminal offence of breaching the registration requirement. The offence will be triable either way; the broad range of sentencing outcomes gives the courts options to address the different degrees of culpability possible with a strict liability offence. If tried by magistrates, the offence will carry a maximum penalty of an unlimited fine and/or 12 months' imprisonment (six months until the commencement of paragraph 24(2) of

Schedule 22 of the Sentencing Act 2020). If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years' imprisonment. Any fine placed on the Principal Accountable Person for a breach of this requirement would not be recoverable from residents (i.e. through service charges or the Building Safety Charge), as set out in the implied terms.

### **Background**

617 This is a new provision.

618 It enables the Building Safety Regulator to take a systematic approach to the oversight of buildings in scope of the new regime. The obligations on Accountable Persons in Part 4 of the regime apply where higher-risk residential buildings become occupied. The meaning of 'occupied' for these purposes is set out in clause 68. Registration will provide information about the building to the Building Safety Regulator who will then be able to use this for the effective regulation of higher-risk buildings.

#### **Example**

For new buildings, the Principal Accountable Person will be required to register their building before it becomes occupied. If the Principal Accountable Person fails to do so, they will commit an offence, as detailed above, unless they have a reasonable excuse.

For existing occupied buildings, the Principal Accountable Person will be required to register their building within a transitional period following the new regulatory regime coming into force. If the Principal Accountable Person fails to register the building within that period, they will commit an offence, as detailed above, unless they have a reasonable excuse.

Information required in the registration process will be set out in regulations and will likely include core details of the building, details of the Accountable Persons, Principal Accountable Person and Building Safety Manager, and an address in England or Wales at which notices can be served on the Principal Accountable Person/Accountable Persons. Regulations will also set out a requirement for the Principal Accountable Person to inform the regulator in the event of any updates or changes to information provided in the initial registration application, which the regulator will use to keep the register up to date. The process is likely to be digitalised.

Information obtained from registration will allow the regulator to produce the national register of higher-risk buildings, and will also ensure the Accountable Persons are identified to the regulator. This information will also be used to support the regulator in prioritising its notifications to the Principal Accountable Person requiring an application for a Building Assessment Certificate, as set out in clause 74.

### **Clause 73: Registration of higher-risk buildings**

#### **Effect**

- 619 Clause 73 makes provisions for registration, and applications that must be made by the Principal Accountable Person.
- 620 The Building Safety Regulator may include a building on the register of higher-risk buildings if the required information has been provided and must also publish a copy of the register in a manner it considers appropriate. Buildings may be removed from the register where they are no longer occupied or are no longer a higher-risk building as set out in clause 62.
- 621 Subsection (4) allows the Secretary of State, through regulations, to make provision about the register, including the information that it contains and the procedure for removing a building from the register.
- 622 Subsection (5) gives the Secretary of State a regulation-making power to set out the requirements of the registration application. This includes the form and content, information, and documents to be provided, the way in which the application needs to be made and the circumstances and method for withdrawal of an application.

### **Background**

- 623 This is a new provision.
- 624 The Independent Review identified that there should be clear dutyholders during occupation who will have statutory obligations to maintain the fire and structural safety of the building. The registration system ensures that dutyholders identify themselves to the Building Safety Regulator, who is then able to use this information to operationalise compliance and enforcement activity.
- 625 An important recommendation from the Independent Review was that the name and UK contact information of the dutyholder(s) in occupation should be notified to the Building Safety Regulator and to residents and any other landlords of dwellings in the building. Notification of this information to the Building Safety Regulator will likely be accomplished through secondary legislation made under this clause.

### **Example**

Before new buildings become occupied, the Principal Accountable Person will need to come forward and register their details and that of the higher-risk building with the Building Safety Regulator. For existing occupied buildings, the Principal Accountable Person will be required to register their building following a transitional period once the new regulatory regime comes into force.

Once the applicant has met the requirements of registration, the Building Safety Regulator will add them to the building register. The Building Safety Regulator will publish the register.

Information required in the registration process will be set out in regulations and will include core details of the building, details of the Accountable Persons, Principal Accountable Person and Building Safety Manager, and an address in England or Wales at which notices can be served on the Principal Accountable Person/Accountable Persons. The process is likely to be digitalised.

Information obtained from registration will allow the regulator to produce the national register of higher-risk buildings, and will also ensure the Accountable

Persons are identified to the regulator. This information will also be used to support the regulator in prioritising its notifications to the Principal Accountable Person requiring an application for a Building Assessment Certificate, as set out in clause 74.

## Clause 74: Occupied building: duty to apply for building assessment certificate

### **Effect**

- 626 As part of the new building safety regime, the Principal Accountable Person will be responsible for registering the higher-risk buildings that they are responsible for with the Building Safety Regulator (see clause 72 for the obligation to do so). The Principal Accountable Person will also be required to apply for a Building Assessment Certificate as per this clause.
- 627 This clause allows the Building Safety Regulator to require applications for the Building Assessment Certificate. The clause will enable the regulator to issue a notification to the Principal Accountable Person, directing them to apply for the Building Assessment Certificate. The Principal Accountable Person must then apply for the Building Assessment Certificate within 28 days of the notice being given.
- 628 Failing to apply for a certificate in the requisite timescale, when directed to do so by the Building Safety Regulator, without a reasonable excuse, will be an offence. If found liable on summary conviction a Principal Accountable Person can face an unlimited fine or imprisonment up to 12 months, or both; and on conviction on indictment can face a fine, imprisonment for up to 2 years, or both. In relation to an offence committed before paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into force, the reference to 12 months is to be read as a reference to 6 months.

### **Background**

- 629 This is a new provision.
- 630 The Independent Review identified that there should be clear dutyholders during occupation who will have statutory obligations to maintain the fire and structural safety of the building. The requirement to apply for a Building Assessment Certificate, and the building assessment that follows, provides a mechanism for the Building Safety Regulator to assess whether the dutyholders are, at that point in time, complying with the relevant Part 4 duties. The Building Assessment Certificate provides a transparent outcome to that assessment.

### **Example**

Building Assessment Certificates issued by the Building Safety Regulator are intended to provide an indication to residents that the regulator assessed the Accountable Person(s) for their building to be meeting specified statutory requirements at the time of assessment. The statutory requirements include, among others, that reasonable steps are being taken under clause 84 to prevent building safety risks materialising and to reduce the severity of any incident resulting from such a risk materialising.

The circumstances and likely timings under which a Principal Accountable Person can expect the Regulator to issue the notice requiring them to apply for

certification (the 'call-in') will be set out in the regulator's Strategic Plan, which the regulator must follow, and which will be approved by the Secretary of State. For any building that passes through Gateway three and is registered, the call-in will likely be within a defined period following occupation. For existing occupied buildings, the regulator will be able to create tranches of buildings, for assessment according to tranche, calling in buildings in stages over an extended period. Existing buildings will likely be trached according to factors such as height and other risk factors. It is intended that all existing occupied buildings will be initially assessed over a 5-year period.

The Building Safety Regulator's approach to calling in existing buildings in tranches will necessarily be flexible to accommodate emerging risk factors and intelligence, allowing buildings to be called in earlier than originally outlined in the Strategic Plan in some cases, if necessary. Should the regulator's overarching approach to tranching shift as a result, the regulator would revise its Strategic Plan to reflect the updated operational timescales.

The Building Safety Regulator will also be responsible for calling in buildings for reassessment periodically. A maximum period by which the regulator must assess any given building for its Building Assessment Certificate will be set out in regulations made by the Secretary of State. Within this maximum period, the regulator will be able to take a risk-based approach to calling in buildings for reassessment, and this approach will be outlined in the Strategic Plan. There may be scenarios under which reassessment is automatically triggered, such as a significant refurbishment, and these circumstances will also be set out in the Strategic Plan.

A Building Assessment Certificate will not be issued by the Building Safety Regulator if the Accountable Person(s) are failing to meet the specified statutory obligations, save for where the regulator considers that the breach can be remedied promptly and is done so, further to the terms of a notice issued pursuant to clause 74(4).

## Clause 75: Applications for building assessment certificates

### **Effect**

- 631 Clause 75 sets out the requirements with regards to the types of information and documentation that needs to be submitted by the Principal Accountable Person with their application for a Building Assessment Certificate as set out in clause 74.
- 632 Subsection (1) sets out that the application must include: prescribed information about the Principal Accountable Person's compliance in appointing a Building Safety Manager, a copy of the most recent Safety Case Report, prescribed information about the Mandatory Occurrence Reporting System, prescribed information that demonstrates the Accountable Persons are meeting their duties with regards to provision of information, and a copy of the resident engagement strategy, as set out in clause 91. The Secretary of State has the power to make regulations prescribing the information set out in this subsection.

633 Subsection (2) allows the Secretary of State to make further provisions regarding the application process by regulations. This includes the form and content, the way in which the application should be made, and anything that must accompany it and circumstances and method of withdrawal of applications.

### **Background**

634 The Independent Review recommended that there needs to be a Building Safety Regulator for the whole of the building (referred to as the Joint Competent Authority in the Review) in relation to fire and structural safety in occupation which can hold dutyholders to account with robust sanctions where necessary.

635 The Building Assessment Certificate is a mechanism that allows the Building Safety Regulator to assess whether, at the time the application is considered, the Accountable Persons are complying with the relevant duties placed on them. The issuance of the certificate by the regulator provides assurance that the Accountable Persons are meeting their requisite statutory obligations at that time.

#### **Example**

The clause sets out some of the documents that must be provided with an application for a Building Assessment Certificate, including a Safety Case Report, where the most recent one has not already been provided to the Regulator. It is intended that the Secretary of State will also make regulations setting out other documents and information that will be required, along with practical details such as how an application will be made.

The Building Safety Regulator will assess the documents provided as part of the application for the Building Assessment Certificate and decide whether Accountable Persons are complying with all relevant duties.

### **Clause 76: Building assessment certificates**

#### **Effect**

636 Once the Principal Accountable Person has applied for a Building Assessment Certificate, pursuant to a direction and as required by clause 74, subsection (2) of this clause requires the Building Safety Regulator to assess whether the relevant duties are being complied with. This subsection also enables the Building Safety Regulator to inspect the building in connection with that assessment.

637 The Building Safety Regulator must issue a Building Assessment Certificate if it is satisfied that, at the time of assessment, the Accountable Persons for the building are complying with the relevant statutory obligations. If the Building Safety Regulator is not so satisfied, it must refuse issuance of the Building Assessment Certificate, unless subsection (4) applies; if so, it will notify the Principal Accountable Person. Subsection (3) details these duties on the regulator.

638 Subsection (4) makes provision for the regulator to issue a notice to the Principal Accountable Person if it finds that a relevant duty is not being complied with on assessment, but the regulator considers that it can be remedied promptly. This allows for the Building Safety Regulator to issue a Building Assessment Certificate if, notwithstanding a breach of relevant compliance, the contravention is rectified promptly according to the terms of the regulator's notice.

- 639 The obligations on the Principal Accountable Person and Accountable Persons are detailed in subsection (5) and include duties to: appoint a Building Safety Manager under clause 78; assess building safety risks under clause 83; manage building safety risks under clause 84; produce a Safety Case Report under clause 85; comply with the Mandatory Occurrence Reporting System under clause 87(4); provide information to the regulator, residents and other persons under clause 89; and produce a Residents' Engagement Strategy under clause 91.
- 640 Subsection (6) gives a power to the Secretary of State to set out, in regulations, the procedural matters pertaining to the notices in this clause and the Building Assessment Certificate, including form and content, and the way in which they are to be given, and the period in which a certificate must be given.

### **Background**

- 641 This is a new provision.
- 642 The Independent Review identified that residents in higher-risk buildings need assurance in terms of the fire and structural safety of their buildings. Provisions relating to a Building Assessment Certificate help to ensure statutory obligations under the new regime are being met, by confirming that at the time of assessment, the regulator was satisfied that the Accountable Persons were complying with the relevant statutory obligations.

#### **Example**

The way in which the Principal Accountable Person can expect to be issued notices and certificates by the regulator, under this section, will be set out in regulations. The information that will be included on the Building Assessment Certificate will also be set out in regulations. This is likely to include the date on which the assessment was carried out by the regulator, and details of the Accountable Person(s) and the Building Safety Manager at the time of assessment.

Once the Principal Accountable Person has applied for the Building Assessment Certificate by submitting the prescribed information and documents to the Building Safety Regulator, the regulator will consider the application and decide whether the relevant statutory duties are being complied with at the time of assessment. The regulator may also undertake an inspection of the building before making its decision.

If the Building Safety Regulator is satisfied that all relevant duties are being complied with at the time of assessment, then the regulator must issue the Building Assessment Certificate.

If the regulator finds a relevant duty is not being complied with on assessment, but the regulator considers that it can be remedied promptly, then it may issue a notice to the Principal Accountable Person instead of immediately refusing the application for the Building Assessment Certificate. The notice to the Principal Accountable Person will briefly describe the contravention and specify a short period by which the contravention should be remedied. If the Principal Accountable Person complies with the notice, and the contravention is remedied

within the specified period, then the regulator may issue the Building Assessment Certificate. If the contravention is not remedied within the specified period, then the regulator must refuse to issue the certificate.

Under clause 77, once the Building Assessment Certificate has been issued by the Building Safety Regulator, it must be displayed in a prominent place within the building.

## Clause 77: Duty to display building assessment certificate etc

### **Effect**

- 643 This clause places a duty on the Principal Accountable Person to display the building's most recent Building Assessment Certificate, any relevant compliance notice, and a prescribed notice.
- 644 Subsection (1) places a duty on the Principal Accountable Person to display together several documents in a conspicuous position within the building. Paragraph (a) requires that a notice, in a form and containing information prescribed in regulations made by the Secretary of State, about the Accountable Persons and any Building Safety Manager, is displayed. Paragraph (b) requires that the most recent Building Assessment Certificate for the building is displayed. Paragraph (c) requires that any relevant compliance notices issued by the Building Safety Regulator are displayed.
- 645 Subsection (5) defines a 'relevant' compliance notice as a compliance notice that has been given to an Accountable Person, where the regulator has provided a copy to the Principal Accountable Person (if the notice was not given to the Principal Accountable Person), and where the regulator has not notified the Principal Accountable Person that the notice has been withdrawn.
- 646 The Building Safety Regulator may place a building in special measures by applying to the First-tier Tribunal for an order appointing a Special Measures Manager. Subsection (2) places a duty on the Principal Accountable Person not to display the Building Assessment Certificate for the building when such an order is in force. The requirements to display a notice about the Accountable Persons still applies.
- 647 Failure by the Principal Accountable Person to comply with the requirements to display in subsection (1) or the requirement to not display a Building Assessment Certificate in special measures in (2)(b), without a reasonable excuse, is an offence. If found liable on summary conviction the Principal Accountable Person can face an unlimited fine or imprisonment up to 12 months, or both; and on conviction on indictment can face a fine, imprisonment for up to 2 years, or both. In relation to an offence committed before paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into force, the reference to 12 months is to be read as a reference to 6 months. In either case, the Principal Accountable Person would be liable to pay a daily fine following conviction until the duty is complied with.

### **Background**

- 648 This is a new provision.
- 649 The Independent Review identified that residents in higher-risk buildings need assurance in terms of the fire and structural safety of their buildings. Provisions relating to a Building Assessment Certificate help to ensure statutory obligations under the new regime have been met, by confirming that at the time of assessment, the regulator was satisfied that the Accountable Persons were complying with all the relevant statutory obligations.

- 650 The duty to display the Building Assessment Certificate ensures that residents are informed about the Building Safety Regulator's most recent assessment of their building, and are assured that at the time of assessment, the regulator was satisfied that all relevant statutory duties were being complied with.
- 651 The duty to display a notice containing the name and contact details of the Accountable Persons and any Building Safety Manager ensures residents know who is responsible for oversight and managing the building safety risks for their building, and how to contact them to raise any concerns.
- 652 The duty to display a relevant compliance notice ensures that residents are informed about any subsisting concerns of the Building Safety Regulator about the building.

### Example

This clause requires the Principal Accountable Person to display several documents in a conspicuous position within the building, primarily so that they can be viewed by residents.

Once the Building Safety Regulator has issued the Building Assessment Certificate, the Principal Accountable Person must display it in a conspicuous position within the building.

Alongside the Building Assessment Certificate, the Principal Accountable Person will need to display a notice containing prescribed information about the Accountable Persons and any Building Safety Manager. The information to be contained in the notice and the form it must take will be specified in regulations. It is intended that it will specify the name(s) and contact details of the Accountable Persons and any Building Safety Manager. This will provide transparency to residents and owners of residential units in the building, so that they know who is responsible for managing the building safety risks for their building, and how to contact them to raise any concerns.

Finally, the Principal Accountable Person must display any relevant compliance notices issued by the Building Safety Regulator. A 'relevant compliance notice' is defined in this clause as a compliance notice that has been given to an Accountable Person, one which the regulator has provided a copy of to the Principal Accountable Person, and a compliance notice where the regulator has not informed the Principal Accountable Person that it is withdrawn. If the compliance notice is issued to an Accountable Person who is not the Principal Accountable Person, the regulator will issue a copy of the notice to the Principal Accountable Person, who will have a duty to display it in the building.

The Building Safety Regulator may place a building in special measures by applying to the First-tier Tribunal for the appointment of a Special Measures Manager. The Tribunal may issue a Special Measures Order, as detailed in clause 103. This clause ensures that, while a Special Measures Order is in place, the building's Building Assessment Certificate is not displayed, thereby signalling clearly that the Special Measures Order prevails over any previous

assessment of the building by the regulator. Similarly, the Special Measures Order causes any previous compliance notices to cease to have effect, as detailed in clause 104(3). Any withdrawn compliance notices would no longer be displayed. The Special Measures Order also results in the appointment of the Building Safety Manager ceasing to have effect, as detailed in clause 104(4): therefore, the prescribed notice would at this point only contain prescribed information about the Accountable Persons and the relevant details required will be set out in regulations.

The Building Safety Regulator will undertake building re-assessments periodically. When a re-assessment is undertaken, the regulator will issue a new certificate if it is satisfied that all relevant duties were being complied with. The Principal Accountable Person must display the most recent Building Assessment Certificate in lieu of the old one, so that any previous certificates issued will be taken down, having been superseded by the most recent certificate

## Building Safety Managers

### Clause 78: Duty to appoint building safety manager

#### Effect

- 653 Clause 78 establishes the role of the Building Safety Manager.
- 654 The clause imposes an obligation on the Principal Accountable Person to appoint a Building Safety Manager for a higher-risk building. The Building Safety Manager must be appointed prior to occupation of the building.
- 655 Subsection (4) of the clause provides for an exemption to the duties set out by the clause. The parameters for this exemption are set out in Clause 81.
- 656 The clause requires that the Principal Accountable Person appoints a Building Safety Manager as soon as reasonably practicable if at any time there is no Building Safety Manager in post for an occupied higher-risk building. The clause also states that the Principal Accountable Person is able to appoint the Building Safety Manager only if they are satisfied that, where the Building Safety Manager is an individual, he or she has the skills, knowledge, experience and behaviours necessary to carry out the role, and where the Building Safety Manager is not an individual that it has the organisational capability to carry out the role's functions and there will be a competent individual from the organisation always in place to oversee and manage this.
- 657 Failing to appoint a Building Safety Manager as per this clause, without a reasonable excuse, is an offence. If found liable on summary conviction, the Principal Accountable Person can face a fine and/or imprisonment up to 12 months (six months until the commencement of paragraph 24(2) of Schedule 22 of the Sentencing Act 2020). If there is conviction on indictment, the imprisonment term is up to 2 years or a fine (or both). Where there is a continued breach of the obligation a daily fine may be imposed until the Principal Accountable Person has appointed a suitable Building Safety Manager.
- 658 Where there are multiple Accountable Persons for a building, the Building Safety Manager must be appointed by the Principal Accountable Person, unless the exception to this duty is relied on following consultation with other Accountable Persons, as set out in Clause 79.

## **Background**

659 This is a new provision.

660 The Independent Review identified that there should be a nominated Building Safety Manager, identifiable to residents, for all occupied higher-risk residential buildings, with the competence to assist the dutyholder meet their duties, where the dutyholder required this assistance. The Building Safety Manager's role is to assist the Accountable Person meet its obligations under Part 4 of the bill, comprising the management of safety and overseeing the systems and processes in place for the building's safety. The Principal Accountable Person will set out the functions of the Building Safety Manager in contract.

661 The appointment of competent individuals to assist dutyholders is commonplace in many high hazard sectors that require a systemic approach to risk management. The requirement to appoint a Building Safety Manager, whether or not an individual, mirrors this, ensuring the holistic and coordinated oversight of delivering safe outcomes.

662 The Principal Accountable Person may wish to effectively appoint itself in the role, as provided for by the exemption included in Clause 81, and supplemented by Clause 82. The obligation to meet the overarching statutory requirements of the regime sit with the Accountable Person and cannot be delegated to the Building Safety Manager.

### **Example**

From commencement of this part of the Act, both empty buildings which will become occupied and existing occupied higher-risk buildings will need to have a Building Safety Manager in place, save for when the Principal Accountable Person has competence to fulfil the role and notifies the regulator of this. Where appointed, the Building Safety Manager will play a key role in assisting Accountable Persons and helping to ensure they meet their obligations under Part 4 of the Bill. Whilst the Building Safety Manager might be assigned certain duties, accountability will always lie with the Accountable Person. The requirement to register a building sits together with the requirement to have a nominated Building Safety Manager in place: - both must be done before occupation. The Principal Accountable Person will need to appoint a Building Safety Manager as soon as reasonably practicable, at all other times, when an occupied higher-risk building may not have one in place. The Building Safety Manager must be competent to assist in the management and oversight of the obligations on the Accountable Person set out in Part 4 of the Bill. This should encourage industry to upskill, in advance, the competency of managing agents and others likely to take on the role.

In practice, given the breadth of the obligations set out in Part 4 of the Bill, it is expected that a team of competent individuals within the same organisation will be required to provide the assistance needed by Accountable Persons. Within appointed managing agent organisations, for example, there may be a group of individuals who, collectively, meet the functions expected of a Building Safety Manager. A Nominated Individual, with appropriate competence, will need to be identified in such instances to oversee the management of relevant

individuals to ensure a holistic and coordinated approach.

## Clause 79: Appointment of Building Safety Manager where multiple Accountable Persons

### Effect

- 663 Clause 79 establishes the processes of appointing a Building Safety Manager for buildings with multiple Accountable Persons.
- 664 Where there are multiple Accountable Persons, clause 70 identifies the Principal Accountable Person. Under clause 78, Principal Accountable Persons have a duty to appoint a Building Safety Manager, unless they meet the requirements of an exception to this duty provided for by clause 81, prior to a building being occupied.
- 665 The clause imposes an obligation on a Principal Accountable Person to consult the other Accountable Persons on the proposed Building Safety Manager appointment before it is confirmed. The Principal Accountable Person may recover a proportion of the payment made to the Building Safety Manager, in performing its role, from the other Accountable Persons and set out in writing the terms on which this is based. The clause allows further regulations to set out how the consultation between the Principal Accountable Person and other Accountable Persons is to take place, the process for any application to the First-tier Tribunal where the terms of the appointment cannot be agreed, and how costs should be apportioned.
- 666 The consultation should result in agreement between the Principal Accountable Person and other Accountable Persons as to the terms and scope of duties of the appointed Building Safety Manager and how the costs are to be met.
- 667 In the event of a failure between the parties to reach agreement, either party may refer the matter to the First-tier Tribunal for a resolution.

### Background

- 668 This is a new provision.
- 669 The Independent Review identified that there should be a nominated Building Safety Manager, identifiable to residents, for all occupied higher-risk residential buildings, with the competence to help the dutyholder to meet their duties, where the dutyholder requires this assistance.
- 670 This is a requirement regardless of the ownership structure of the building. For many higher-risk buildings, ownership structures are complex and numerous bodies may hold rights and obligations for different parts of a building. Notwithstanding this, the Review set out that a whole building approach be delivered for the management of building safety risks. Therefore, there cannot be multiple Building Safety Managers engaged separately by each of the Accountable Persons in a single building.
- 671 The Building Safety Manager's role is to help Accountable Persons meet their obligations under Part 4 of the bill, comprising the management of safety and overseeing of the systems and processes in place for the building's safety. The Principal Accountable Person will set out the functions of any Building Safety Manager in contract.
- 672 The appointment of competent individuals to assist dutyholders is commonplace in many high hazard sectors that require a systemic approach to risk management. The requirement to appoint a Building Safety Manager, whether or not an individual, mirrors this, ensuring the holistic and

coordinated oversight of delivering safe outcomes.

### Example

From commencement of this part of the Act, both empty buildings which will become occupied and existing occupied higher-risk buildings will need to have either a Building Safety Manager appointed, or confirmation from the Principal Accountable Person of their suitability for the role in lieu of an appointed Building Safety Manager.

There must be a single Building Safety Manager, appointed by the Principal Accountable Person, for the building, regardless of the number of Accountable Persons for the building. Any Building Safety Manager should play a key role in ensuring a whole building approach to managing risks.

While the Building Safety Manager must be appointed by the Principal Accountable Person, every Accountable Person must ensure they meet the duties placed on them by the Bill. Therefore, the details included in the Building Safety Manager's contract set by the Principal Accountable Person are by some degree constrained by the arrangements of the other Accountable Persons.

While the contract is at the discretion of the Principal Accountable Person, the Principal Accountable Person would not be able to contractually require the Building Safety Manager to undertake duties, or give the Building Safety Manager responsibilities, in so far as they relate to parts of the building beyond the Principal Accountable Person's control without the express agreement of the relevant Accountable Person.

A period of consultation between the Principal Accountable Person and other Accountable Persons should provide collective agreement with regards to the contractual arrangement between the Principal Accountable Person and Building Safety Manager.

## Clause 80: Terms of appointment of Building Safety Manager

### **Effect**

- 673 Clause 80 sets out the tenure of the Building Safety Manager. The clause states that the Building Safety Manager will hold the role by virtue of the contractual arrangements made by the Principal Accountable Person in its appointment.
- 674 The clause also allows, at any time, for the Building Safety Manager to resign from its position and for the Principal Accountable Person to terminate the contract, by giving the written notice.
- 675 Subsection (4) sets out that the appointed Building Safety Manager ceases to hold the position if a building is subject to a special measures order.

### **Background**

- 676 This is a new provision. The Independent Review identified that there should be a nominated Building Safety Manager for all higher-risk residential buildings. The clause sets out the nature of

its tenure.

### Example

The Building Safety Manager may be carrying out day to day functions, as set out in the agreement with the Principal Accountable Person, to assist the Accountable Persons in discharging their statutory obligations. However, the Building Safety Manager could choose to resign of its own volition, and conversely the Principal Accountable Person may find that the service provided by the Building Safety Manager is below standard and choose to dismiss that person. In both circumstances the Principal Accountable Person would need to replace the Building Safety Manager as soon as reasonably practicable.

## Clause 81: Exception from duty to appoint Building Safety Manager

### **Effect**

- 677 Clause 81 provides an exception to the duties imposed by Clause 78 with regards to the appointment of a Building Safety Manager by the Principal Accountable Person.
- 678 The exception applies only where the Principal Accountable Person has notified the Building Safety Regulator following being satisfied that, if they are an individual, they have the skills, knowledge, experience and behaviours required to ensure they comply with their Part 4 functions, or, where the Principal Accountable Person is not an individual, they have the organisational competence to meet these duties.
- 679 The Secretary of State will make regulations setting out the form, content and manner that the notification, by the Principal Accountable Person's to the Building Safety Regulator, must take.
- 680 Where a Principal Accountable Person relying on this exception is not an individual, it must at all times and, so far as reasonably practicable, ensure that there is a nominated individual in place with the skills, knowledge, experience and behaviours necessary to manage the relevant functions. Failing to meet this obligation, without a reasonable excuse, is an offence. If found liable on summary conviction, the Principal Accountable Person can face a fine and/or imprisonment up to 12 months (six months until the commencement of paragraph 24(2) of Schedule 22 of the Sentencing Act 2020). If there is conviction on indictment, the imprisonment term is up to 2 years or a fine (or both). Where there is a continued breach of the obligation, a daily fine may be imposed until the Principal Accountable Person ensures the breach is remedied.
- 681 The clause requires that a Principal Accountable Person relying on the exception must notify the Building Safety Regulator of this prior to the building being occupied. Alternatively, where there was a Building Safety Manager in place and that appointment ends, the Principal Accountable Person must notify the Building Safety Regulator that it is relying on this exception as soon as reasonably practicable.
- 682 Where a Principal Accountable Person ceases to be satisfied that its own competence is sufficient to rely on the exception in this clause, then the application of the exception ends. Accordingly, the Principal Accountable Person is required to appoint a Building Safety Manager as per clause 78 as soon as reasonably practicable.

### **Background**

683 This is a new provision.

684 The Independent Review identified that there should be a nominated Building Safety Manager that is identifiable to residents for all occupied higher-risk residential buildings, with the competence to assist the dutyholder meet their duties. In line with the Review's findings, where the Principal Accountable Person has the competence and ability to undertake this role for themselves, they should declare this to the Regulator and make it clear to residents, in place of appointing a Building Safety Manager.

685 Competency requirements of individuals and organisations are commonplace in many high hazard sectors that require a systemic approach to risk management. The competency requirements placed on a Principal Accountable Person making use of the exception to appoint a Building Safety Manager mirror this, ensuring the holistic and coordinated oversight of delivering safe outcomes.

### Example

From commencement of this part of the Act, both empty buildings which will become occupied and existing occupied higher-risk buildings will need to have either a Building Safety Manager appointed, or confirmation from the Principal Accountable Person of their suitability for the role in lieu of an appointed Building Safety Manager.

A number of Principal Accountable Persons will have the competence and capability from within their organisations to ensure they meet the duties set out in Part 4 of the Bill without the assistance of a Building Safety Manager. For example, many housing associations and local authorities will currently oversee and manage their properties through in-house teams. They may have policies and procedures in place to ensure they manage risks in an effective manner.

However, such teams may work in silos. For example, teams dealing with lift maintenance, engaging with residents/customers, or gas or electrical safety may have little or no interaction with each other. A holistic approach to delivering the management of building safety risks requires these silos to be broken down and brought together.

In order to ensure there is proper coordination and cooperation between relevant teams within organisations, an individual must be in place with authority to manage and direct relevant teams. This person must have an understanding and overview of the interactions and interdependencies of different areas, enabling the effective day to day management of building safety risks.

It is not anticipated that where a Principal Accountable Person is an individual, they are likely to meet the competence requirements to appoint themselves, and as such this exception would not apply and a contracted Building Safety Manager will be required in such circumstances. Where the Principal Accountable Person or Building Safety Manager are not individuals, then they will always be required to have in place a competent individual to oversee the

functions set out in this clause.

## Clause 82: Section 81: further provision where multiple accountable persons

### **Effect**

- 686 Clause 82 establishes the process a Principal Accountable Person making use of the exception to appoint a Building Safety Manager under Clause 81 must follow where there are multiple Accountable Persons for the building.
- 687 In addition to the provisions provided for by Clause 81, before the Principal Accountable Person gives notification to the Building Safety Regulator as per subsection (1)(b) of that clause, the clause imposes an obligation on a Principal Accountable Person to consult the other Accountable Persons on the proposal before it is confirmed. The Principal Accountable Person may recover a portion of the relevant expenditure from the other Accountable Persons and set out in writing the terms on which this is based. The clause allows further regulations to set out how the consultation between the Principal Accountable Person and other Accountable Persons is to take place, to provide for accountable persons to make an application to the First-tier Tribunal where the terms of the agreement cannot be agreed, and to provide how costs should be apportioned.
- 688 Subsection (5) sets out the relevant expenditure for this clause, meaning the costs incurred by the Principal Accountable Person as a result of planning, managing and monitoring the Part 4 functions as defined in clause 78.
- 689 The consultation should result in agreement between the Principal Accountable Person and other Accountable Persons as to the terms and scope of duties of the Principal Accountable Person in respect of the relevant Part 4 functions and how the costs are to be met.
- 690 In the event of a failure between the parties to reach agreement, either party may refer the matter to the First-tier Tribunal for a resolution.

### **Background**

- 691 This is a new provision.
- 692 The Independent Review identified that there should be a nominated Building Safety Manager, that is identifiable to residents, for all occupied higher-risk residential buildings with the competence to assist the dutyholder meet their duties. In line with the Review's findings, where the Principal Accountable Person has the competence and ability to undertake this role for themselves, including where there are multiple Accountable Persons for the building, they should notify the Regulator of their intention to do so.
- 693 Competency requirements of individuals and organisations are commonplace in many high hazard sectors that require a systemic approach to risk management. The competency requirements placed on a Principal Accountable Person making use of the exception to appoint a Building Safety Manager mirror this, ensuring the holistic and coordinated oversight of delivering safe outcomes.

### **Example**

From commencement of this part of the Act, both empty buildings which will become occupied and existing occupied higher-risk buildings will need to have either a Building Safety Manager appointed, or confirmation from the Principal

Accountable Person of their suitability for the role in lieu of an appointed Building Safety Manager.

There must be a single appointment for the building, with the appointee playing a key role in ensuring a whole building approach to managing risks regardless of the number of Accountable Persons for the building.

Even where there are multiple Accountable Persons for a building, in some cases the Principal Accountable Person will have the competence and capability from within their own organisation to ensure all of the duties set out in Part 4 are met without the assistance of a Building Safety Manager.

In order to ensure proper cooperation and coordination for this approach to be effective, all accountable persons must be in agreement. While the Principal Accountable Person would be taking on the role, every Accountable Person must ensure they meet the duties placed on them by the Bill. Therefore, the details of their agreement and the extent of the Principal Accountable Person's role across the building are by some degree constrained by the arrangements of the other Accountable Persons.

A period of consultation between the Principal Accountable Person and other Accountable Persons should provide collective agreement with regards to the proposed arrangements, before the Principal Accountable Person notifies the Building Safety Regulator that the exception to the duty to appoint a Building Safety Manager is in effect for the building. Where it is not agreed regulations will be made to assist reaching such an agreement and ultimately to confer a right on the accountable persons to seek a determination by the First-tier Tribunal.

## Duties relating to building safety risks

### Clause 83: Assessment of building safety risks

#### Effect

- 694 Clause 83 provides that every Accountable Person is under an ongoing obligation to carry out an assessment of the building safety risks in/of/arising from, and relevant to, the part of the higher-risk building for which they are responsible. The definition of building safety risks is that provided for in clause 59.
- 695 The assessment must be suitable and sufficient so that the Accountable Person is able to comply with their safety duties imposed by this Part of the Bill including managing building safety risks and providing information about the building to other persons (under clause 84 and clause 89 respectively). The assessment must include consideration of hazards that originate in an area outside their responsibility developing into a risk which enters the area for which they are responsible.
- 696 This duty will apply as soon as the building is in multiple occupation by residents and the first assessment must be carried out as soon as it is reasonably practicable after that point. New Accountable Persons must carry out their risk assessment as soon as it is reasonably practicable to

do so after having become the Accountable Person.

697 Further assessments must be carried out by the Accountable Person at regular intervals, when directed to do so by the Building Safety Regulator, when the Accountable Person suspects the assessment is no longer valid or they become aware of a significant change to the building.

698 The Accountable Person is defined in clause 69 as a person with a legal estate in possession of any part of the common parts of a higher-risk building or a person who does not hold legal estate but is under a relevant repairing obligation in relation to any common parts. The definition of occupied is set out in clause 68.

699 Where there are multiple Accountable Persons within a building it is expected that they will co-operate and co-ordinate with every other Accountable Person carrying out their obligations. This includes their carrying out their risk assessment duties under this clause and sharing information about building safety risks relating to the whole building in good time.

### **Background**

700 This is a new provision.

701 The Independent Review identified that a new approach, built on existing risk management principles, was needed to manage risks to residents of higher-risk buildings and ensure that the whole building is properly, regularly and proactively considered by dutyholders against the principles of what is reasonably practicable to reduce risk.

702 The Independent Review recommended new responsibilities to be placed on dutyholders to proactively manage risks and work with residents (both those residing in the property and, depending on the ownership model, the landlord or leaseholder of the flat) to ensure that the building remains safe throughout its life cycle.

### **Example**

Both higher-risk buildings that have passed through the Gateway process and are recently occupied as well as existing higher-risk buildings that have long been occupied by residents will be covered by clause 83.

Undertaking a suitable and sufficient risk assessment of the building safety risks is the initial step of a systematic approach that the Accountable Person will need to adopt to achieve the outcome of managing the building safety risks. That is to say the Accountable Person will follow a set process of identifying the hazards within their building, deciding who might be harmed by those hazards, evaluating the likelihood and consequence of those hazards becoming a major incident, deciding on the measures that are needed to lower the risks of the hazards becoming a major accident to an acceptable level, deciding what measures are needed to mitigate further risk of harm to residents in the event a major incident is realised and ensuring those measures remain fit for purpose whilst the building is occupied.

For example, the following would be appropriate in terms of a regular review where a building is fully occupied (and settled) and/or the building has been occupied for some time:

The Building Safety Manager has scheduled a review of the building's risk assessment to comply with the duty and checks that the assessment of the potential causes of fire remain valid. The potential causes of the outbreak of fire or rapid fire development beyond a single fire compartment are confirmed by the assessment to be: hoarding, uncontrolled combustible materials in the common corridors; unchecked fire spread through voids and penetrations; uncontrolled or unreported penetrations through walls by residents (or their contractors); uncontrolled changes to front doors of flats (meaning they are no longer 30 minutes fire resisting), damage to fire resisting doors in the common areas; obstructed open vents (especially in winter when common areas can get very cold and windy). The Building Safety Manager finds no new foreseeable causes of escalation and that the existing control and mitigation measures are adequate to deal with the identified hazards. They schedule a further review in 3 months.

The Accountable Person should be reassessing the building safety risks whenever they have reason to suspect a change in the risks and proactively whenever there is a significant change in the building, for instance refurbishment work is carried out.

For example, the Accountable Person would have reason to suspect an assessment is no longer valid if it relied on the presence of an alarm system that had become defunct, assumed complete compartmentation between flats that was no longer there or relied on residents having the ability to escape fire/respond to emergencies in certain ways which no longer applied to new residents with mobility impairments.

Even where they are of the opinion that a change to the building would not alter the level of risk, the assessment should be undertaken to verify if that assumption is correct. For example, the Accountable Person should review their assessment of the risks if there is a significant change to matters which may impact on fire or structure and their management of those risks, such as a change to the timing of bin collections which would mean that a bin store is no longer big enough to store all the building's cumulative waste for the whole period between collections so that rubbish bags begin to be left outside, increasing the risk of fire spread. In that case, the Accountable Person would make a new assessment of risks and the ways of managing those risks given the likely build-up of bin bags, and to update their steps/actions to ensure the risks do not materialise.

## Clause 84: Management of building safety risks

### Effect

703 Clause 84 imposes an ongoing duty on Accountable Persons to take all reasonable steps and actions necessary to manage building safety risks, defined in Clause 59, preventing them materialising in their building and to mitigate the severity of such an incident if it does occur.

- 704 The duty to take the necessary steps will apply as soon as the building is occupied. Any necessary steps must be taken promptly.
- 705 This duty will run parallel to that of needing to undertake a suitable and sufficient risk assessment, under clause 83.
- 706 To make informed decisions, the Accountable Person should have identified the relevant hazards to their building in accordance with their risk assessment duty, decided who might be harmed by those hazards and evaluated the likelihood and consequence of those hazards becoming a major incident within the part of the building for which they are responsible. This clause then requires the Accountable Person to decide on and take all those steps or measures that are reasonably needed to both prevent the risk of fire spreading, structural collapse and any other prescribed matter and to mitigate the severe impact of such an incident on those in or around the part of the building for which they are responsible.
- 707 When deciding on the measures needed to meet the duty, Accountable Persons must have regard to a set of principles, set out in regulations, ordered to form a best practice approach to risk management, from most efficient to least efficient, the most efficient being to avoid risk.
- 708 Where those measures prove insufficient, the Building Safety Regulator will have the power to direct Accountable Persons to take the steps needed in order to comply with the duty through a compliance notice issued under Clause 99.
- 709 The Accountable Person is under an ongoing duty to ensure these measures are kept under review and Subsection (5) requires a systematic approach to be adopted, that is used in other risk management frameworks, to ensure the Accountable Person fully understands the measures employed and that those measures remain appropriate and effective whilst the building is occupied.
- 710 Where there are multiple Accountable Persons within a building it is expected that they will co-operate and co-ordinate with every other Accountable Person carrying out their obligations. This includes taking steps under this clause jointly/in co-ordination with other Accountable Persons, and jointly setting up and agreeing processes for adopting a systematic approach to ensuring the measures employed remain effective. The outcome should be for the safety arrangements across the whole building must work together (or at least not conflict) to manage building safety risks.

### **Background**

- 711 This is a new provision.
- 712 The Independent Review identified that a new approach, built on existing risk management principles, was needed to manage risks to residents in higher-risk buildings and ensure that the whole of the building is properly, regularly and proactively considered by a dutyholder against the principles of what is reasonably practicable to reduce risk.
- 713 The Independent Review recommended new responsibilities be placed on dutyholders to proactively manage risks and work with residents (both those residing in the property and, depending on the ownership model, the landlord or leaseholder of flats) to ensure that the building remains safe throughout its life cycle.

#### **Example 1**

Both higher-risk buildings that have passed through the Gateway process and

are recently occupied as well as existing higher-risk buildings that have long been occupied by residents will be covered by clause 84. The Building Safety Regulator will have the power to issue guidance as to how those building safety risks may be managed and mitigated to an acceptable level and relevant factors to be taken into account in assessing what it is reasonable/ practicable to do and what circumstances may be relevant.

For example, the Accountable Person and Building Safety Manager take on management of a higher-risk building and when the first residents are settled, set about assessing the building safety risks:

After the first residents move in, the Building Safety Manager undertakes an assessment of building safety for the Accountable Person in accordance with the duty to undertake a suitable and sufficient risk assessment. The Building Safety Manager uses golden thread and Gateway information to gather intelligence on the safety measures designed into the building and confirms the suitability of those measures by inspecting the premises and understanding how residents are using the building.

They consult guidance issued by the Building Safety Regulator. The Building Safety Regulator will have the power to issue guidance as to how those building safety risks may be managed and mitigated, the likely relevant factors to be taken into account in assessing what it is reasonable to do and what circumstances might be relevant.

A key control measure, to ensure that the existing protective measures continue to provide safety, is to subject contractors to a building safety induction, tailored to the specific building. On checking the induction pack, the Building Safety Manager realises that the training materials are out of date. The Building Safety Manager escalates this to the Accountable Person, because the training materials are derived from a package used throughout the organisation. The Accountable Person updates the induction pack across the organisation, with the Building Safety Manager tailoring the package to accurately reflect the specific building. The Accountable Person makes resident safety the focus of the induction pack and uses the content to populate sections of the Resident Engagement Strategy. As part of the system for ongoing management of risk, the Accountable Person includes a regular review of training materials to make sure they remain relevant and up to date.

### Example 2

There may be instances where the Accountable Person, assisted by the Building Safety Manager, as a first step, need to gather intelligence on the safety measures designed into the building. The building may be a stock transfer from a housing association that was subject to a management takeover. The building safety information handed over might be incomplete. There might be no evidence supporting the fire resistance of fire compartments, which have been assumed

based on what should be there, rather than what is actually present. In this instance, they might contract for invasive structural surveys to give them a reliable starting point and evidence for the baseline resistance of the building to a major fire or structural collapse.

In this instance, the Accountable Person and Building Safety Manager know that the building is designed to operate a stay-put strategy in the event of a fire. The invasive survey provides evidence that the compartmentation is reliable and has not been compromised. However, the survey identifies that the electronic security doors to the residential floors do not release in the event of power failure, for instance resulting from a fire in the electrical circuits. This finding would potentially lock residents on their respective floor plate. This security feature was part of the original building design, but did not take fire safety into account. The entrapment risk is assessed as a high consequence, low likelihood event, but the Accountable Person decides to install a green break-glass box to over-ride the electronic locks from the residential side, to put any potential likelihood beyond doubt. Residents are informed of the reason for the override being installed. Inspection of the override feature is included in the maintenance and auditing schedule once the works are complete.

### Example 3

An example of ongoing steps to meet the duty would be where a resident notifies the Building Safety Manager that combustible materials are being stored in common areas. The Building Safety Manager undertakes routine checks and whilst nothing was noted on the previous inspection, on a spot check, empty cardboard boxes are found stacked in a stairwell. The Accountable Person is informed and the Building Safety Manager removes the boxes. The Accountable Person also puts a reminder notice on the resident's internet pages, increases the preventative signage prohibiting storage in common areas and alters the Building Safety Managers' scheduled walkthrough of the common areas both in terms of time and frequency.

### Example 4

In examples below, the risk assessment undertaken for the purposes of complying with clause 83 highlights necessary steps to reduce (or further reduce) building safety risks:

The Accountable Person, assisted by the Building Safety Manager, assess the building safety risks as a part of a planned regular assessment. They are aware that the bin store is the likeliest source of a fire and there have been several incidents of residents dropping discarded cigarettes butts down the bin chutes, which have resulted in the fire brigade needing to be called out. As this is a building from the 1960s, the chutes are located in common areas and the store is next to the entrance and smoke often comes up the chute when there has been a fire.

Having consulted guidance issued by the Building Safety Regulator as to best practice, they decide to fit fire shutters on fusible links to the base of the chute, install open sprinkler heads directed into the bin beneath the chute, and fusible link sprinkler heads above the other bins stored against the walls within the bin store. They update the resident internet pages to advise residents of the actions taken and to remind residents not to throw any hot materials (including cigarettes) down the chutes. They also improve the safety signs in each chute room.

At a regular site inspection, the Building Safety Manager notices that one of the anti-vehicle barriers installed close to the building has been knocked out of position and needs to be replaced to be fit for purpose and to reduce any risk of accidental mechanical damage to the building structure from vehicular transport. The Building Safety Manager notifies residents that the barrier will be replaced, contracts a competent company to replace the barrier and in the meantime puts out cones to ensure vehicles are kept a safe distance from the building to reduce the risk of damage.

As part of the ongoing management of building safety, the Accountable Person, assisted by the Building Safety Manager and their maintenance team, undertake regular inspections of service risers into the building. They note on their inspection that the padlock has been removed on the electrical supply room and people have been able to gain access. The Accountable Person decides to replace the padlock with a keypad system, changes the scheduled inspections to be more frequent, updates the resident internet pages and makes all warning signage on services risers more prominent.

## Clause 85: Safety Case Report

### **Effect**

- 714 Clause 85 provides that the Principal Accountable Person is under a duty to produce a Safety Case Report that demonstrates that building safety risks have been both assessed and all reasonable steps have been taken to prevent building safety risks, defined in Clause 59, materialising in the building and to mitigate the severity of such an incident if it does occur.
- 715 The duty to prepare a Safety Case Report containing an assessment of the building safety risks relating to the building and any steps taken under clause 84 starts to apply as soon as the building is occupied. Regulations may also be made by the Secretary of State under the power in subsection (3) to set out other requirements about the form and content of Safety Case Reports.
- 716 Once the Principal Accountable Person has written their Safety Case Report, they must notify the Building Safety Regulator, under clause 86.
- 717 The Safety Case Report will be the vehicle through which Accountable Persons are able to demonstrate compliance with their ongoing duty to prevent fire spread and structural collapse and reduce the severity of any incident. The clause provides a duty on the Principal Accountable Person to revise it following any further assessments of the building safety risks relating to the building under clause 83 and following the taking of any further steps under clause 84. The

intention is that at any point the Safety Case Report demonstrates that the arrangements Accountable Persons have in place are reasonable for managing the specific building. Where there is a change to the Principal Accountable Person, there is a requirement for the new Principal Accountable Person to prepare a Safety Case Report as soon as reasonably practicable after becoming the Principal Accountable Person.

718 The Safety Case Report can be reviewed and revised under a Principal Accountable Person's own volition however the clause also provides a power for the Building Safety Regulator to direct the Accountable Person to review the Safety Case Report.

719 Where there are multiple Accountable Persons in a building, it is intended that there should be a single Safety Case Report to be produced by the Principal Accountable Person for that building. It is intended that all Accountable Persons in the building should co-operate and co-ordinate carrying out their obligations. This includes carrying out their risk assessment and risk management duties and sharing information about building safety risks relating to the whole building in good time to enable a single Safety Case Report to be produced.

### **Background**

720 This is a new provision.

721 The Independent Review recommended new responsibilities should be placed on dutyholders to proactively manage risks and work with residents to ensure that the building remains safe throughout its life cycle. It set out that the dutyholder should do this by undertaking regular safety case reviews of the building in which they must demonstrate to a regulator that they are reducing building safety risks.

722 The new 'safety case review' system is therefore the main way that the Building Safety Regulator will hold the Accountable Person to account for identifying the hazards and risks in their building, describing how risks are controlled and describing the safety management system in place so that building safety risks are reduced and all reasonable steps are taken to prevent major incidents arising from building safety risks.

723 Safety case requirements are employed in many high hazard industries. They provide the means by which dutyholders demonstrate to themselves and regulators that they are effectively identifying and managing risks to an acceptable level. In these regimes the regulator gives permission to a dutyholder to carry out certain categories of intrinsically high-hazard work. In a safety case review system, the dutyholder provides information to the regulator to demonstrate that they have considered what could go wrong in an installation, what the worst-case scenarios are, the consequences if those scenarios are realised and to show that they have preventive, protective and reactive measures in place to manage the risks of the scenarios occurring. When the regulator is content that the dutyholder has fulfilled the relevant requirement(s) they 'permit' operation and subsequently seek reassessments for any significant changes as well as reviewing Safety Case Reports on a routine cycle.

724 In the context of managing building safety risks in higher-risk buildings, the Accountable Person will therefore make the claim that the building is safe for occupation (meets the outcome of clause 84), argue that the sum of the measures they have in place support that claim, that decisions have been taken in accordance with the prescribed principles and direct the reader to the evidence that supports that argument.

## Example

In safety case review systems, there are two key terms:

- Safety case – the full body of evidence, comprising a comprehensive and structured set of documents. It will often include evidence from test results, detailed safety analysis reports etc. For the purposes of the regulation of higher-risk buildings this may also be referred to as the golden thread information (the concept of golden thread goes further, to include specific digital standards).
- Safety Case Report – a summary of the key components derived from the full body of evidence, with appropriate references to supporting evidential documents, which makes the claim of and argument for safety.

These terms are often interchangeable; it is the Safety Case Report in this regime that is the key document and is submitted to the Building Safety Regulator.

From commencement, if a building is occupied by residents in more than one dwelling, the Accountable Person has an obligation to assess the building safety risks relating to the building and to take all reasonable steps and actions necessary to ensure the prevention of major incidents arising from the building safety risks and the reduction in severity of any such incident (clauses 82 and 83). They are also under a duty to produce a Safety Case Report to demonstrate how they have complied with these obligations.

Therefore, having undertaken the required risk assessments, surveys, analysis etc. and decided on and implemented necessary control, reduction and mitigation, the Accountable Person must produce a Safety Case Report, which should summarise the findings and demonstrate how the duties in clauses 83 and 84 are being met.

The Report must comply with the content requirements as set out in secondary legislation and should take account of any guidance issued by the Building Safety Regulator about Safety Case Reports.

In developing their Safety Case Report, the Accountable Person may wish also to proactively seek the views of the Building Safety Regulator.

A well-structured and coherent Safety Case Report will allow the Accountable Person to demonstrate that they have a good understanding of the factors that influence risk and the controls required to minimise the chance of risks causing harm to people.

The Safety Case Report must be specific to the building in question, a generic report is not acceptable. It will describe the building, set out the hazards and risks that have been identified and the arrangements in place for controlling and managing those. It is important for the Safety Case Report to explain why the measures employed were chosen, why they are suitable to the level of risk in the

building and how the Accountable Person is implementing them. The adopted control measures must be shown to collectively control the risks and reduce them so that major incidents will be prevented, and their severity reduced.

The Safety Case Report must also explain the management systems the Accountable Person has implemented to ensure the safety arrangements remain fit for purpose and that the risks are managed consistently and on an ongoing basis. It should also explain the emergency plans that would be relied on if something did go wrong and there was a failure in the safety arrangements.

## Clause 86: Notification and provision of report to the regulator

### **Effect**

- 725 As soon as the Principal Accountable Person has complied with the duty to produce a Safety Case Report as described in clause 85, they must notify the Building Safety Regulator. The notification must be sent as soon as reasonably practicable.
- 726 When a Safety Case Report is revised, owing to a change in building safety risks, a change to the Principal Accountable Person or another Accountable Person in the building if there are multiple Accountable Persons, or a change to the steps being taking to manage building safety risks, the Principal Accountable Person has to notify the Building Safety Regulator.
- 727 The Safety Case Report can also be subsequently reviewed and revised by a Principal Accountable Person if necessary after a further assessment by an Accountable Person or if an Accountable Person has had to make additional steps to manage a building safety risk (clause 85). This clause also provides a power for the Building Safety Regulator to require the Principal Accountable Person to send in their Safety Case Report for review by the Building Safety Regulator. If requested by the Building Safety Regulator, the Safety Case Report must be provided by the Principal Accountable Person as soon as is reasonably practicable.
- 728 This clause also gives a power to the Secretary of State to set out in secondary legislation, with accompanying guidance, the form and process that a notification will need to follow in order to enable the Building Safety Regulator to make a decision as to whether the Safety Case Report needs to be called in for assessment.

### **Background**

- 729 This is a new provision.
- 730 The Independent Review recommended new responsibilities should be placed on dutyholders to proactively manage risks and work with residents to ensure that the building remains safe throughout its life cycle.
- 731 The new safety case review system is the main way that the Building Safety Regulator will hold the Accountable Person to account for identifying the hazards and risks in their building, describing how risks are controlled and describing the safety management system in place so that building safety risks are reduced and kept to an acceptable level.

### **Example**

Once the Accountable Person has complied with the steps in clause 85, they must notify the Building Safety Regulator. In the context of higher-risk buildings

within the scope of the new regime, the Accountable Person will therefore notify the regulator that they are able to make the claim that they are meeting the requirement of clause 84, argue that the sum of the measures they have in place support that claim and direct the reader to the evidence that supports that argument.

The Building Safety Regulator can decide whether to assess the Safety Case Report at this stage or whether to assess it when provided as part of an Accountable Person's application for a Building Assurance Certificate, as described in clause 75.

An example as to when the Building Safety Regulator might exercise its power to request a revised Safety Case Report would be where an incident in another building reveals a major incident scenario not previously considered or where recommendations have been made following a major accident or public inquiry.

The review of the Safety Case Report is likely to involve the Building Safety Regulator assessing not only whether the Report complies with the requirements of clause 85 and regulations made under it, but also whether it suggests compliance with the obligations in clauses 83 and 84. This might for instance include an assessment of whether the steps being taken under clause 84, both technical and procedural, remain appropriate in light of new knowledge or requirements.

The Accountable Person might notify the Building Safety Regulator that they have made revisions to the Safety Case Report to accommodate new steps in the light of recommendations from an inquiry. Upon receiving the notification, the Building Safety Regulator could request submission of the revised Safety Case Report and assess it. Where the regulator has reason to suspect from this assessment that the steps taken are deficient, it will be open to it to, for instance, inspect the building to investigate further. If the inspection confirms the deficiency in the steps employed, the Building Safety Regulator will work with the Accountable Person to remove the deficiency; it has the power, where necessary, to direct the Accountable Person to take these measures under clause 83 and/or to issue a compliance notice under clause 99 requiring contraventions of the Accountable Person's obligations to be remedied.

## **Duties relating to information and documents**

### **Clause 87: Mandatory reporting requirements**

#### **Effect**

732 Clause 87 will place a duty on the Principal Accountable Person to establish and operate an effective mandatory occurrence reporting system and a further duty on Accountable Persons to ensure reportable information related to the safety of an occupied building is given to the Building Safety Regulator in a manner specified by the Building Safety Regulator. The system will be assessed as part of the Building Assessment Certificate application.

733 The power is flexible as it is expected that reportable information may be varied and subject to change over time in line with developments of the safety landscape of buildings. It is envisaged that in most cases the Principal Accountable Person will set up the system in such a way as to have the Building Safety Manager operate it, whilst the Principal Accountable Person as the dutyholder will always remain responsible for the system.

734 Information submitted in an occurrence report cannot be used as evidence in criminal proceedings against any person, except in relation to specific circumstances as laid out in the clause. Information from reports can be used by defendants in their own defence. An equivalent provision will be made in building regulations for the design and construction phases.

### **Proposed use of power**

735 It is intended that the power given to the Secretary of State will be used to require Accountable Persons to report certain structural and fire safety occurrences to the Building Safety Regulator, similar to those duties that exist in other industries such as aviation. This will involve reporting to the Building Safety Regulator any structural or fire safety event that occurs in or about the part of a higher-risk building for which the Accountable Person is responsible and which represents a significant risk to life safety. Mandatory occurrence reporting will complement voluntary occurrence reporting, which will capture safety occurrences not of a high enough risk to be required reporting under mandatory occurrence reporting.

736 Secondary legislation will prescribe which occurrences which must be reported to the Building Safety Regulator. This will be based on occurrences which, if they were to occur within a higher-risk building, would likely meet the threshold of a significant risk to life safety. Guidance will be provided to Accountable Persons to assist them in determining whether an occurrence must be reported as laid out in secondary legislation.

737 The specified manner of reporting will likely be via an online portal. Current proposals for the timeframe for reporting are an immediate notification to the regulator as soon as a mandatory occurrence is identified, followed by a full report as soon as practicable and not later than ten calendar days from the time of the occurrence being identified.

738 The occurrences specified in secondary legislation may include the discovery of a structural safety or fire safety related defect.

### **Background**

739 This is a new provision.

740 The Independent Review recommended that it should be mandatory for key dutyholders to report particularly dangerous safety-related events to the Building Safety Regulator. This section contributes to the fulfilment of this recommendation.

#### **Example**

A discarded cigarette starts a fire in the bin room of a higher-risk residential building. Smoke is detected by sensors and the bin chute plates automatically close to provide compartmentation, but the plates have not been appropriately tested and are not of the correct specification. As a result, smoke is allowed to pass up the bin chutes and into resident's rooms. This presents a significant risk to life safety. A resident reports the incident through the building's mandatory occurrence reporting system. The Accountable Person responsible for the area

where the incident occurred immediately notifies the Building Safety Regulator that a mandatory occurrence has been identified, and a full report is sent to the regulator as soon as is practicable and no later than ten calendar days from the occurrence being identified. Upon receiving the report, the regulator could, at its own discretion, use it as a basis for further investigation or enforcement measures. Such a report would also help the regulator to identify potential trends of similar such incidents across the sector. Additionally, valuable lessons learnt contained within the report could be shared with industry by the regulator, helping others to proactively identify and resolve similar issues on other sites and improve best practices across the sector.

## Clause 88: Keeping information about higher-risk buildings

### **Effect**

- 741 The new regulatory regime will regulate building safety risks in higher-risk buildings. This clause places requirements about information keeping on the person responsible for higher-risk buildings – the Accountable Person. Higher-risk building is defined in clause 62.
- 742 This clause imposes a requirement that the Accountable Person must keep and maintain certain required information about the building (the prescribed information) and ensure it is up to date as far as possible. If the Accountable Person does not have the prescribed information this clause imposes a requirement that they obtain this information, unless it is not practicable for them to do so.
- 743 The prescribed information is also called the “golden thread” of information. The specific documents, data and information that will make up the prescribed information will be set out in regulations.
- 744 The prescribed information will generally be information about the building and information relevant to the management and reduction of building safety risks (as defined in clause 59) in the building.
- 745 This clause also imposes a requirement that the prescribed information must be kept in accordance with prescribed standards. Regulations will set out the principles to which the information should be stored and kept, to ensure the information is accessible.
- 746 The Building Safety Regulator will also be able to issue statutory guidance about how to comply with the duties in this clause under the power set out in clause 117(1)(c). The guidance will provide best practice examples and detail to support the Accountable Person in fulfilling their duties under this clause and the regulations.
- 747 Regulations may also be made under this clause to set out when the duties to keep and obtain the prescribed information will apply.

### **Proposed use of power**

- 748 Regulations made under this clause will set out what the “prescribed information” is and what “prescribed standards” it needs to be stored/kept in accordance with, and when the duties to do so will apply.

### **Background**

749 This is a new provision.

750 The Independent Review identified that a golden thread of information would ensure more effective building safety management throughout a building's life cycle. Therefore, it is important to ensure that the persons responsible for building safety maintain and have access to accurate and up to date information.

751 Requiring the prescribed information to be stored to the prescribed standards will improve the accessibility of this important information which is likely to be key in enabling compliance by the Accountable Person with their safety case-related duties in clauses 83-86.

### Example

Information that must be obtained, kept up to date and in accordance with prescribed standards could for example include information about the alarm system that is installed in the building and when it was last tested or information about where the fire stopping is in the building. This information must be stored digitally (to the required prescribed standards set out in regulations and exemplified in statutory guidance). This information can then be used for example to inform the Accountable Person's risk assessment under clause 83. Capturing the information and storing it in an accessible fashion will also ensure that those working on the building can be made aware of key aspects of the building that may be affected by their work.

## Clause 89: Provision of information etc to the regulator, residents and other persons

### Effect

752 Clause 89 sets out that the Secretary of State may make regulations requiring the Accountable Person to share prescribed information and documentation about their building in certain prescribed circumstances. It will also enable the Secretary of State to make regulations to make exceptions to any duty imposed under the regulation, as well as set out the manner, form and standards which must be met in provision of this information and documentation.

753 The clause sets out that the Accountable Person may be required to provide prescribed information, or copies of that information, to the Building Safety Regulator, to other Accountable Persons in the building, to residents of the building and owners of flats in the building, and it also allows regulations to be made setting out other types of person who it should be supplied to.

754 Residents means all adults lawfully residing at the property This clause also extends to the legal owner (where this is not the same as the residential occupier) of an individual residential unit, for example a non-occupying leasehold landlord who is renting out an individual flat.

### Proposed use of this power

755 Regulations under this clause will set out the circumstances in which an Accountable Person for a higher-risk building must provide others with the prescribed information and documentation about the building. This will include a requirement to provide all new residents with a range of building safety information, and requirements to provide the regulator with information about the building, such as information about the Building Safety Manager as required. Regulations will also lay out what information or documentation must be shared, the form of the prescribed information, the way in which it must be given, the standard to which it must be given, and any

exceptions to any duty imposed under the regulations.

756 Regulations will also detail information that will need to be shared with the Regulator to enable it to effectively regulate and oversee buildings in scope. This will include a provision requiring the Accountable Person to notify the Regulator when it appoints an insolvency practitioner (administrator, trustee in bankruptcy, liquidator) under the Insolvency Act 1986.

### **Background**

757 This is a new provision.

758 The Independent Review identified the importance of accurate and up to date information for ensuring building safety. Regulations will include a requirement on the Accountable Person to share specified details about the Insolvency Practitioner with the Regulator to ensure that it has a complete picture the state of affairs of the individual or company and to help to ensure the ongoing safety management of the building whilst insolvency proceedings are progressed. The availability and accessibility of this information to the regulator and residents is crucial to ensure people feel safe in their homes and ensure those responsible for building safety are held to account. This clause and clause 88 are intended to help ensure that residents, the regulator and other persons have this information, and those who need to be are provided with relevant information about that particular building.

759 Regulations under this clause will also set out the circumstances when the Accountable Person must provide information to the regulator and the form in which this information should be submitted. Regulations may also make requirements to ensure information is presented to the regulator in a standard format as this will enable the regulator to more easily review and analyse the information. This will support the regulator in their role in ensuring building safety and holding Accountable Persons to account.

#### **Example**

The Accountable Person for a higher-risk residential building must collect and maintain information relevant to the safety of that building (prescribed information). They must provide prescribed information from this to their residents. When a person purchases a leasehold flat within their property, the building owner must ensure the new leaseholder is provided with the prescribed information.

### **Clause 90: Provision of information etc on change in Accountable Person**

#### **Effect**

760 Clause 90 applies where the Accountable Person for a higher-risk building changes. It relates to clause 88, and regulations made under that clause which will set out 'prescribed information' that must be obtained, kept up to date and kept in accordance with specified standards. This prescribed information is also known as the golden thread.

761 This clause sets out that an 'outgoing Accountable Person' i.e. one who is selling or otherwise changing their interest in the building so that they are no longer an Accountable Person must provide certain information, or copies of certain documents, to their successor, the 'incoming' Accountable Person.

762 This clause gives the Secretary of State the power to issue regulations setting out the information

that must be provided by the outgoing Accountable Person, the circumstances when they must provide it, the timescale within which they must do so and any standards that the information must be provided in accordance with.

763 Not complying with these requirements will be an offence with a maximum penalty of an unlimited fine and/or 12 months' imprisonment in the magistrates' court (six months until the commencement of paragraph 24(2) of Schedule 22 of the Sentencing Act 2020). If tried in the Crown Court, the maximum penalty will be an unlimited fine and/or two years' imprisonment. If the breach continues after conviction, the court will also be able to impose an ongoing penalty until such time as the breach is remedied; that penalty will be set at a daily rate of no more than a level 1 fine (currently £200).

### **Proposed use of power**

764 Regulations under this clause will set out the circumstances in which an Accountable Person for a higher-risk building must hand over the prescribed information about the building. In particular, these will provide for when an outgoing Accountable Person must provide the prescribed information to the incoming Accountable Person, what that information should contain and standards that it must accord with.

### **Background**

765 This is a new provision.

766 The Independent Review identified that a 'golden thread' of good quality information would ensure more effective building safety management throughout a building's life cycle. Therefore, it is important to ensure that provisions are made so that golden thread information is provided by one Accountable Person to those who purchase or obtain an interest in the building from them. Penalties are available where the Accountable Person does not comply.

#### **Example**

The Accountable Person for a higher-risk building has to collect and maintain information relevant to the safety of that building (prescribed information). When they sell the building, they must ensure that all this information is handed over to the buyer. Requirements setting out how the information is stored, and the format of the information are intended to make this information accessible to new owners.

## **Engagement with residents etc**

### **Clause 91: Residents' engagement strategy**

#### **Effect**

767 Clause 91 requires the Principal Accountable Person, to produce a residents' engagement strategy to promote the participation of residents and flat owners in the decision-making about building safety risks in their building. In preparing the residents' engagement strategy every other Accountable Person in the building (if there is more than one) must cooperate with the Principal Accountable Person as much as possible. The high-level requirements for meeting this obligation are set out in subsection (3) and confirm that the strategy will need to contain:

- the information that each Accountable Person will provide to residents about decisions relating to the management of the building;
- the scope of what the Accountable Person will consult residents about;
- the methods each Accountable Person will use to seek residents' views and
- details of how they will measure the effectiveness of their strategy.

768 Each Accountable Person will be responsible for providing a copy of the strategy to residents and owners of residential units in the part of the building for which they are responsible.

769 The Secretary of State will also have the power to make regulations to add to the requirements for the residents' engagement strategy. It is envisaged that these provisions will also be supported by Good Practice Guidance to provide practical help to Accountable Persons in developing their Strategy including worked examples and templates, for which the Residents Panel should be one of the statutory consultees (see clause 11).

### **Background**

770 The Independent Review found that residents did not have a strong enough voice in the safe management of their homes and specifically that they often did not have the chance to offer views and participate in the decision-making process. This requirement is designed to tackle that by placing an obligation on Principal Accountable Persons to have a resident engagement strategy that sets out how they will deliver inclusive resident participation and involvement as well as measuring its effectiveness.

## **Clause 92: Requests for further information**

### **Effect**

771 Clause 92 provides that the Accountable Person shall provide information or a copy of documentation to a resident or an owner of a flat on request. A list of the more detailed safety information and documentation that can be obtained on request will be set out in regulations to be made by the Secretary of State. The regulations may also make provision about:

- the way in which information or a copy of a document must be provided under this section; and
- the form in which information is to be provided under this section, and may, in particular, require that the information is provided in an accessible form.

772 In a building managed by multiple Accountable Persons, the appropriate Accountable Person will be responsible for providing the requested information or copy of documents to residents and, to owners of flats in the part of the building for which they are responsible.

773 The Secretary of State may also make regulations which set out the circumstances when an Accountable Person is exempt from the requirement in this provision to make a copy of a document available or some or all of the information requested.

### **Background**

774 In addition to recommending that residents should automatically receive key building safety information, the Independent Review also recommended that further and more detailed information about the safety of their building should be made available to any resident on request.

The further information to be provided under this clause will be set out in regulations and is currently envisaged to comprise the following:

- Full, current and historical fire risk assessments;
- Planned maintenance and repairs schedules;
- Outcome of Building Safety inspection checks;
- How assets in the building are managed;
- Details of preventive measures;
- Fire protection measures in place;
- Information on the maintenance of fire safety systems;
- Fire strategy for the building;
- Structural assessments; and
- Planned and historical changes to the building.

775 The clause also provides that the Secretary of State may make regulations setting out the circumstances when an Accountable Person is exempt from the requirement to make some or all of this information or documentation available. The exemptions are envisaged to cover information related to:

- the security of the building and/or the residents of that building, for example technical and operational information about the lifts in a building. That information could be misused by someone who wanted to cause damage to the building and/or harm to residents;
- the security of other buildings in the vicinity, for example, information about the technical system that controls sprinklers in a building. Disabling the sprinkler system could have a negative impact on surrounding buildings because of the risk of fire spread;
- individual residents through the release of personal information about them, for example, the nature and extent of any vulnerabilities an individual resident may have.

### Clause 93: Complaints procedure operated by principal accountable person

#### **Effect**

776 Clause 93 requires the Principal Accountable Person, with cooperation from other Accountable Persons, to establish and operate a complaints process and system for residents and owners of residential units to raise safety concerns or concerns about the performance of a duty of the Accountable Person. More detail on the requirements will be set out in secondary legislation, such as but not limited to the process for raising a concern, including persons who can raise a complaint on behalf of residents, the period in which a complaint should be dealt with and, the points at which a complaint should be referred to the Building Safety Regulator for consideration.

777 In buildings managed by multiple Accountable Persons a single complaints system will be developed in which each Accountable Person is responsible for the safety concerns raised by residents and the owners of residential units in the part of the building for which they are responsible.

### **Background**

778 This is a new provision to increase transparency and strengthen complaints handling in higher-risk Buildings.

779 The Independent Review found that residents did not have a strong enough voice in the safe management of their homes and specifically that they often struggled to get their complaints addressed. This requirement is designed to tackle that by placing an obligation on all Accountable Persons to have a transparent, clear, and effective complaints process for residents to use when things go wrong.

## **Clause 94: Complaints procedure operated by the regulator**

### **Effect**

780 Clause 94 requires the Building Safety Regulator to establish and operate a complaints procedure and system.

781 In establishing or making significant changes to their complaints process the Building Safety Regulator must consult with the Residents' Panel which will be established as one of their Advisory Committees – see clause 11 for more detail.

782 The Secretary of State may by regulations make provision in relation to the establishment and operation of the complaints system, in particular the period within which to consider and deal with a complaint and the action the regulator must consider taking in response.

783 A complaint in this section, means one relating to a building safety risk in an occupied higher risk building or one relating to an Accountable Person or Special Measures Manager.

### **Background**

784 This is a new provision to increase transparency and strengthen complaints handling in higher-risk buildings (as defined in clause 62).

785 The Independent Review found that residents did not have a strong enough voice in the safe management of their homes and specifically that they often struggled to get their complaints addressed. This requirement is the second part of tackling that systemic weakness and closely links to clause 93. It is designed to make sure that residents have an effective escalation route to the Building Safety Regulator where the Accountable Person has not resolved their safety concerns.

## **Residents' etc duties**

### **Clause 95: Duties on residents and owners**

#### **Effect**

786 Clause 95 provides that a resident of a higher-risk building (aged 16 or over) or an owner of a residential unit in the building must:

- not act in a way that creates a significant risk of a building safety risk materialising;

- not interfere with a relevant safety item; and
- comply with a request made by the appropriate Accountable Person, for information reasonably required to perform their duties to carry out an assessment of building safety risks and to manage those risks.

787 The duties will apply to residents of all tenures dwelling in the building, leaseholders, social housing tenants, short and long term, and private renters. The duties will also apply to non-resident owners of residential units. The duties are about residents' behaviours and actions in responding to requests for information from the appropriate Accountable Person to assess and manage building safety risks.

788 In this clause, "relevant safety item" means anything in or which forms part of the common parts of a building that is intended to improve the safety of anyone in the building or its vicinity in relation to building safety risk, for example, signage, sprinklers and fire extinguishers. Owners of residential units and residents are to refrain from interfering with safety items in terms of damaging, removing, or hindering the safety item's function unless they have a reasonable excuse for doing so.

### **Background**

789 The Independent Review recommended that residents should have a clear understanding of their responsibilities in relation to helping to keep their building safe.

#### **Example**

An owner of a flat in a higher risk building will be responsible for ensuring that the gas boiler in the unit is regularly serviced and kept in good working order. As part of their management of safety risks the appropriate Accountable Person may request information to confirm an annual boiler check by a competent gas engineer. If the resident or owner of the flat refuses to present the information, they have contravened part of their duty and the appropriate Accountable Person could issue a contravention notice and seek an order from the county court requiring the resident or owner of the flat to provide the information. It is expected that court action be undertaken only as a last resort.

## **Clause 96: Contravention Notices**

### **Effect**

790 Clause 96 permits an Accountable Person for an occupied higher-risk building to serve a notice on a resident or owner of a residential unit in their part of the building where they have reason to believe the resident has not complied with one or more of the residents' duties under clause 95.

791 The notice is to be served on the resident (or owner of residential unit) by the appropriate Accountable Person responsible for the area of the building for which they are responsible.

792 A notice under this clause is a notice that specifies:

- what the resident has supposed to have done and why this is a breach of one or more of their duties;

- what action the resident should take so that they are no longer in breach and a reasonable time for doing so;
- anything the resident should not do to avoid further breaches of the duty; and
- what may happen next if the resident fails to comply with the notice.

793 If the resident or owner of a residential unit has breached the duty not to interfere with a relevant safety item the appropriate Accountable Person may ask them to pay for the repair or replacement of the item if repair or replacement is necessary. That sum shouldn't exceed the reasonable costs of repairing or replacing the item.

794 Following service of a notice on the resident, the appropriate Accountable Person may ask the county court to make an order. The court may make an order provided that it is satisfied that:

- a contravention notice has been served on the resident or owner of the residential unit;
- the resident or owner of the residential unit has breached the duty alleged in that notice; and
- it is necessary to make the order.

795 An order made by the county court under this clause may require a person:

- to provide specified information, or do a specified thing, within a certain timescale;
- not to do a specified thing or;
- to pay a sum if that has been demanded.

796 The Secretary of State may by regulations make provision about contravention notices under this clause, including:

- details about the form of a notice and the way it is to be given; and
- further provision about the content of the notice.

### **Background**

797 The Independent Review recommended that residents should have a clear understanding of their roles and responsibilities to help to keep their building safe. Residents need to be made aware of the impact of their behaviours, and that in certain circumstances this may pose a risk to the ongoing safety of their dwelling, their fellow residents, and the building they live in. It is intended that residents should be aware of the impact of their behaviour and understand what may pose a risk to building safety.

798 The focus is about 'residents' behaviours (and the behaviour of premises owners) and their co-operation with the Accountable Person in keeping the building safe. Where this fails there is a process that an Accountable Person will follow to enforce those duties in the event of non-compliance, including formal action through the courts.

### Example

The Accountable Person has reason to believe that a resident keeps having barbecues on their timber balcony or is using the balcony as a space to weld/repair a motor bike. The Accountable Person engages the resident, educating them on the dangers the behaviour poses and requests that the resident refrains such activities providing them with a reasonable timeframe to do so.

If after the reasonable timeframe has passed, the Accountable Person is aware the resident has not adhered to the request, the resident is served with a contravention notice.

## Clause 97: Access to Premises

### **Effect**

799 This clause provides that the county court may, following an application by the Accountable Person for an occupied higher-risk building, make an order in respect of any premises in the section of the building for which the Accountable Person is responsible, provided that it is satisfied that the order is necessary for the purpose as set out in the request. The premises referred to in this clause refer to residential units or other spaces controlled by the owner or resident such as a garage or storage cupboard that does not form part of the residential unit. Before the Court makes an order it must ensure that:

- the Accountable Person has made a written request, setting out the purpose and an explanation for why access is needed, providing at least 48 hours' notice of their intention to access the premises and seeking permission to access the premises at a reasonable time;
- the request is either made in connection with the Accountable Person's duty to assess or manage building safety risks or in connection with duties on residents and owners of residential units; and
- entry to the premises has not been permitted.

800 An order made under this section may permit access for the purpose requested and if necessary for that purpose, the taking of measurements, photographs, recordings or samples.

801 If an order is made, it must specify a date or a time period during which the relevant person must allow the Accountable Person, or a person authorised by them, access to the premises.

802 A relevant person includes the resident, or if the premises is not occupied, it may be the owner or a person controlling the premises.

### **Background**

803 Residents and owners of residential units in higher-risk buildings are required to comply with a range of duties designed to ensure that the Accountable Person is able to effectively discharge their duty to minimise the risk of fire or structural safety risks so far as is reasonably practicable. Those duties are as follows:

- Not to act in a way that creates a significant risk of a building safety risk materialising;
- Not to interfere with a relevant safety item; and
- To comply with a request, made by the appropriate Accountable Person for information reasonably required for the purposes of their duty to assess and manage building safety risks.

804 The Accountable Person may need access to one or more spaces controlled by the resident or owner - residential unit and or other premises - in the building so that they can satisfy themselves that the resident is complying with a specified duty, or in order to perform their own duties to assess building safety risks and take reasonable steps to minimise them.

#### Example 1

A situation where this power may need to be exercised is where the Accountable Person needs access to fulfil their safety risk assessment in the of the part of the building for which they are responsible. They may seek access to a garage controlled by a resident to check electrical wiring throughout the building following a power outage.

#### Example 2 - resident breach duty

A situation where this power may need to be exercised is where the Accountable Person has reason to believe a resident or an owner of a residential unit or other premises has breached a duty. They may have used their storage cupboard to store flammable items such as gas cylinders or they may be having barbecues or using other open flame cooking equipment on their private balcony. The Accountable Person may require access in order to establish whether there has been a breach of the resident's duty under clause 95.

## Enforcement

### Clause 98: Duty on regulator to enforce Part

#### **Effect**

805 This clause is self-explanatory.

### Clause 99: Compliance notices

#### **Effect**

806 Clause 99 enables the Building Safety Regulator to issue a compliance notice to an Accountable Person where they are contravening, or appear likely to contravene, a 'relevant requirement' under this Part of the Bill or a requirement set out in regulations made under it. Regulations may set out requirements that are excluded from enforcement action under this clause. The notice will either require that particular, specified steps are taken within a period of time set out in the notice or will require the relevant person to remedy the contravention in question within the period of time set out in the notice.

- 807 If the contravention is one that places people in or about the building in imminent danger, in the Building Safety Regulator’s view, the compliance notice is termed an ‘urgent action notice’. The consequences of this are i) that the regulator is likely to set a shorter period to rectify the contravention and ii) any appeal against the notice will not suspend its effect unless the Tribunal determines that it should (see clause 112(3)).
- 808 If the person issued with a compliance or urgent action notice does not comply by the date specified, or otherwise breaches the notice, the Building Safety Regulator will be able to prosecute for the breach. The offence of breaching a notice will be triable either way, reflecting that not only will a contravention have occurred, but a formal opportunity to rectify it will have been refused. If tried by magistrates, the offence will carry a maximum penalty of an unlimited fine and/or 12 months’ imprisonment (six months until the commencement of paragraph 24(2) of Schedule 22 of the Sentencing Act 2020). If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years’ imprisonment. Under clause 138, certain corporate officers could also be liable for prosecution.
- 809 These notices will be appealable to the First-tier Tribunal (see clause 112 for further detail).

### **Background**

- 810 This clause introduces a power for the Building Safety Regulator to address non-compliance with the new regime for the safety of higher-risk buildings without having to resort immediately to criminal prosecution.
- 811 These measures have been modelled on notices under section 21 of the Health and Safety at Work etc Act 1974 and are intended to be used in similar circumstances.

#### **Example**

The Building Safety Regulator becomes aware that an Accountable Person has not been maintaining the information as required by clause 88 and regulations made under it. The Regulator issues a compliance notice to the Accountable Person identifying the contravention in question and setting a period of time for the Accountable Person to rectify that contravention.

### **Clause 100: Compliance notices: supplementary**

#### **Effect**

- 812 Clause 100 enables the making of regulations to set out further detail as to how compliance notices will work in practice, including what should be specified in notices; how notices should be given to relevant persons; how notices can be amended or withdrawn; and how arrangements can be made to extend the set period for compliance.
- 813 This clause also requires the Building Safety Regulator to notify other relevant bodies where it serves a compliance notice, including the local authority, relevant Fire and rescue authority, the Regulator of Social Housing (in appropriate cases) and any other body prescribed in regulations.

### **Clause 101: Offence: contravention giving rise to risk of death and serious injury**

#### **Effect**

- 814 Clause 101 creates an offence of breaching a ‘relevant requirement’ under the new regime set out

in this Part of the Bill, or regulations made under it, without reasonable excuse, where that failure places those in or about the building at a significant risk of death or serious injury arising from a building safety risk. A 'relevant requirement' is defined as a requirement that is not excluded from enforcement action by secondary legislation. 'Building safety risks' are defined in clause 59.

815 The offence is triable either way, with a maximum penalty of an unlimited fine and/or 12 months' imprisonment (six months until the commencement of paragraph 24(2) of Schedule 22 of the Sentencing Act 2020). If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years' imprisonment. If the breach continues after conviction, the court will also be able to impose an ongoing penalty until such time as the breach is remedied; that penalty will be set at a daily rate of a level 1 fine (currently £200).

### **Background**

816 Where a requirement under the new regime is breached, the Building Safety Regulator would normally be expected to use a compliance notice as described in the previous clauses to secure compliance from the Accountable Person or Building Safety Manager – or an urgent action notice, where the contravention places people in or about the building in imminent danger. For the most serious breaches of these requirements, where the failure places those in or about the building at a significant risk of death or serious injury, the Building Safety Regulator will be able to move directly to prosecution for the offence described in this clause, if it considers that to be the most effective and appropriate course of action.

#### **Example**

On a first inspection of an existing higher-risk building, the Building Safety Regulator finds evidence that, while the building's main exit route is in constant use, the emergency exit at the foot of the stairs is seldom used and, over time, has warped to the point where it has become stuck in the frame and cannot be opened, even by putting a shoulder to it. In addition, the building's office is on the ground floor and has no self-closing device on the door, with numerous ignition sources in the office and deliveries stored there, giving a high risk of fire open to the living accommodation. This means that a fire in the office would affect the means of escape for anyone wanting to evacuate because, due to the stuck emergency exit, they have to pass the office and, for the accommodation on the ground floor, the fire and smoke will be right outside their front doors.

Given the potential seriousness of these risks, the Building Safety Regulator issues the Accountable Person with an urgent action notice (as described in clause 99), requiring the issues to be rectified within seven days. In addition, as the Building Safety Regulator has found similar failings in other buildings under the control of the Accountable Person, and given the significant risk of death or serious injury to those living in the building, the Building Safety Regulator decides it would be appropriate to prosecute the Accountable Person for this offence and seek a significant penalty from the courts to punish this non-compliance.

## **Special measures**

## Clause 102: Notification by regulator before applying for special measures order

### **Effect**

817 Clause 102 sets out the procedure that the Building Safety Regulator must follow before applying for a special measures order. It must notify persons, with information as set out in subsection (3), that it proposes to put the building into special measures and intends to apply to the First-tier Tribunal to appoint a Special Measures Manager to carry out functions in place of any Accountable Person in the building. These notifications will be in the form of an initial notice and then a final notice, once a decision has been made. The initial notice will set out the terms of the proposed order and give reasons for the proposed application and allow a period by which representations from recipients can be made.

818 Subsection (2) and (4) sets out that the Building Safety Regulator must give initial and final notices of the proposal to the following persons listed below:

- Each Accountable Person for the building;
- Any Building Safety Manager for the building;
- Each resident aged 16 year or older of the building;
- Each owner of a residential unit in the building;
- Any managing agent of the building in scope, or any part of it;
- A recognised tenants' association for the building, as defined by s.29 of the Landlord and Tenant Act 1985;
- A manager appointed under s.24 of the Landlord and Tenant Act 1987;
- The fire and rescue authority for the area in which the building is situated;
- The local housing authority for the area in which the building is situated;
- The regulator of social housing (if the Accountable Person is a registered provider);  
and
- Where the building is in mixed use, the Responsible Person under the Regulatory Reform (Fire Safety) Order 2005, of that part of the building which is occupied for business purposes.

819 Subsection (10) gives a power to the Secretary of State to amend the list of persons detailed above by way of regulations.

820 The clause specifies the content that must be included in the notice, including the way in which persons can submit comments and observations, to the Building Safety Regulator about the proposals for special measures. The Building Safety Regulator must then decide whether to make the application to the First-tier Tribunal and communicate its final decision with those persons it notified of its intention to do so.

821 The Building Safety Regulator must comply with subsections (4) and (5) before making an application for a special measures order. These subsections require that the Building Safety Regulator must decide whether to make an application for special measures and give final notice

of that decision. That notice must also include the reasons for its final decision and, if necessary, also set out the final terms of the proposed special measures order which the Tribunal will be asked to make.

- 822 Subsection (7) provides that in notifying the requisite persons as set out in subsection (2), the Building Safety Regulator only has to notify those it has knowledge of and has taken reasonable steps to make itself aware of.
- 823 Subsection (8) clarifies references in the clause to “relevant part”, “special measures order” and “special measures manager”.
- 824 Subsection (9) gives the power to the Secretary of State to make provisions in regulations about the form of the notices and the way in which the notices must be given.
- 825 The circumstances in which a Special Measures Manager can be appointed and the functions they can be given are set out in clause 103.

### **Proposed use of power**

- 826 This clause gives a power to the Secretary of State to amend by way of Regulations the list of persons that the Building Safety Regulator needs to notify of the intention to apply for a special measures order and its decision following that consultation.
- 827 The clause also gives a power to the Secretary of State to make provision in regulations about the form of the notice and about the way in which the notice must be given to interested parties specified in subsection (2). This will be detailed in secondary legislation.

### **Background**

- 828 This is a new provision.
- 829 Where the Building Safety Regulator proposes to apply to the First-tier Tribunal to intervene on the Accountable Person’s management of their building, procedural fairness dictates that affected parties should have the opportunity to make comment and provide representations. The clause ensures that the Building Safety Regulator discharges its power to apply for a special measures order in a fair and transparent way.

#### **Example**

The Building Safety Regulator deems that a building should be placed in special measures after contravention by an Accountable Person of two or more duties under part 4 of the Bill. After taking successive enforcement measures against the Accountable Person, it is of the opinion that the breaches puts the safety of residents in the building at risk and notifies it and other persons that it will apply to the First-tier Tribunal for the appointment of a Special Measures Manager. The notice sets out details of the reason for the application along with identity of the Special Measures Manager. It provides information about the proposed terms of special measures order and how representations can be made by parties. The time limit for making such representation expires and in light of these, the Building Safety Regulator still judges that the fire and structural safety of the building is compromised, it applies to the First-tier Tribunal for a special measures order to be made, and notifies the specified persons concurrently of

this decision.

## Clause 103: Special measures order

### **Effect**

- 830 Clause 103 provides that the First-tier Tribunal may appoint a Special Measures Manager, for an occupied higher-risk building, further to an application made by the Building Safety Regulator.
- 831 Clause 103 sets out the grounds about which the First-tier Tribunal must be satisfied before making an order appointing a Special Measures Manager and, de facto, the grounds on which the Building Safety Regulator would use to apply for such an order. The clause sets out the functions which can be conferred upon the appointed Special Measures Manager for the building i.e., the functions under Part 4 of the Bill or regulations made under it, (except the duty to appoint a Building Safety Manager because that role will cease upon the making of a special measures order).
- 832 Subsection (3) makes provision for the appointed Special Measures Manager to carry out any function as a receiver of the building safety charges, to enable it to carry out the functions which it has been given under the order.
- 833 The clause gives the First-tier Tribunal the powers to make provision for any matter relating to the exercise of the Special Measures Manager’s functions and any incidental/ancillary matters. It also provides that a building in special measures remains in place until the order is discharged. This would be done by way of application to the First-tier Tribunal under clause 111.
- 834 Subsection (7) sets out that the definition of “building safety charge” as having the same meaning as in paragraph 1 of Schedule 2 to the Landlord and Tenant Act 1985.

### **Background**

- 835 This is a new provision.
- 836 The Independent Review recommended that there needs to be a regulator in relation to fire and structural safety of a residential building in occupation who can hold duty-holders to account with robust sanctions where necessary.
- 837 The Government is going further and introducing a Special Measures Manager who would take on the management of risks in a building as a last resort, where the Building Safety Regulator considers it appropriate to keep residents safe from that poor management of building safety risks.

### **Example**

An Accountable Person repeatedly fails to meet the statutory obligations under Part 4 of the Bill, and after using the compliance and enforcement tools at its disposal, the Building Safety Regulator is of the opinion that the safety of the residents is at risk and applies to the First-tier Tribunal for an order to appoint a Special Measures Manager. The special measures order details the identity of the Special Measures Manager, the scheme and terms of management and specific functions that the Special Measures Manager would undertake to meet the statutory obligations under Part 4. In making the order, the First-tier Tribunal specifies that the Special Measures Manager has functions of a receiver of the

Building Safety Charge to pay for its own remuneration and functions in relation to dispensing with its obligations in special measures.

## Clause 104: Special measures order: supplementary

### **Effect**

- 838 Clause 104 supplements provisions regarding special measures orders to appoint Special Measures Managers under clause 103.
- 839 The clauses provide that the functions given to Accountable Persons by Part 4 of the Bill, or regulations under it, are to be treated as a function of the Special Measures Manager for the building, except any function in relation to the making of an application to or an appeal to the tribunal.
- 840 The special measures order made cancels the requirement set out in any unexpired compliance notices issued in respect of the building, once in effect. The Accountable Person remains liable for the breaches of any compliance notices contravened before the special measures order is made. The special measures order also has the effect of automatically ending the appointment of the building's Building Safety Manager. The role of Building Safety Manager does not subsist in special measures.

### **Background**

- 841 This is a new provision.
- 842 This clause supplements clause 103 as described in the note above.

## Clause 105: Effect of special measures order on relevant contracts and legal proceedings

### **Effect**

- 843 Clause 105 enables the Special Measures Manager to take over relevant contracts that the Accountable Person has in place. So rather than terminate the contract the Special Measures Manager can “step into the shoes” of the Accountable Person for duration of the special measures order.
- 844 Subsection (3) sets out the criteria of when a contract is a ‘relevant contract’ for the purposes of this clause and includes provision that to be a relevant contract it must be specified as such or fall within a description of contracts in the Special Measures Order.
- 845 There is provision in subsection (4) that the Special Measures Manager has the discretion to bring, continue or defend a cause of action as set out in subsection (5).
- 846 Subsection (5) provides the circumstances in which a Special Measures Manager may rely on its right with regard to causes of action, in subsection (4). Namely, if a cause of action is accrued to or against the Accountable Person of the building before the special measures order is made; if it relates to a relevant function of the Accountable Person or of the Building Safety Manager prior to the special measures order being made; if the cause of action is detailed in the special measures order pursuant to this clause; and if the requisite notice is given by the Special Measures Manager to any person that the manager considers would have an interest in the (subsection (4)) cause of action.

847 Where the Special Measures Manager for the building is liable to pay damages incurred prior to their appointment as a result of any act or omission by the Accountable Person or Building Safety Manager, then the said Accountable Person or Building Safety Manager is liable to reimburse the manager for the same.

848 Subsection (7) clarifies what is meant in the clause by “relevant function” and “relevant person”.

### **Background**

849 This is a new provision.

850 In the making of this provision, it is considered that it may be necessary for the Special Measures Manager to be able to take over contracts and liabilities of the Accountable Person, to enable it to effectively discharge the functions as set out in the special measure order. It allows them to recoup damages arising from breaches of contracts relating to the discharge of Part 4 functions, prior to a special measures order coming into effect and pursue third parties.

### **Example**

The Special Measures Manager takes over a contract from the Accountable Person to pursue a claim against a third party in relation to contractual performance of services in relation to functions under Part 4 of the Bill. The third party responds to the cause of action with a counter-claim. The counter-claim relates to the period prior to the special measures order coming into effect and is a contractual one against the Accountable Person in relation to its Part 4 functions. Nevertheless, the Special Measures Manager would need to pay any damages awarded to the third party against the Accountable Person, if the manager had taken over the contract subject to the counter-claim. Alternatively, if the manager’s own claim is successful, the counterclaim may offset any damages award in the manager’s claim. In either case, the Special Measures Manager would subsequently obtain reimbursement from the Accountable Person.

## **Clause 106: Application by Special Measures Manager for order under section 24 of Landlord and Tenant Act 1987**

### **Effect**

851 Clause 106 amends the Landlord and Tenant Act 1987 (‘LTA 1987’) to align it with requirements of the Building Safety Bill, by inserting new text as section 24ZA. This will enable the special measure provisions of the Bill to operate effectively with the existing landlord and tenant legislation for occupied higher-risk buildings.

852 The amendments in this clause enable a Special Measures Manager to be able to make an application to the First-tier Tribunal for the appointment (or replacement) of a manager of the building (whether that is replacing a landlord, managing agent or a court appointed manager). The effectiveness of the special measures order, and the work a Special Measures Manager can do, may be compromised in a building where there is an incompetent manager or manager who is obstructive/fails to cooperate with the Special Measures Manager.

853 The Special Measures Manager must serve a notice prior to making an application for a s.24ZA

order. That notice must be served on the landlord, on any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to tenants of flats contained in those premises under a tenancy and on each Accountable Person for the higher-risk building. The notice must specify the Special Measures Manager's name and an address in England and Wales at which any person, on whom the notice is served, may serve notices, including notices in proceedings, on the Special Measures Manager in connection with this Part.

854 The tribunal may make a s.24ZA order, upon application by a Special Measures Manager, in only two circumstances. Firstly, when the current landlord or manager is breaching an obligation owed to the special measure manager as set out in the special measures order and that it is just and convenient to make the order in all the circumstances of the case; or secondly, where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

### **Background**

855 This is a new provision.

856 It aligns the Landlord and Tenant Act 1987 with the Building Safety Bill to replace a manager in situations where they fail to meet their obligations in the order to work constructively with the Special Measures Manager in ensuring building safety risks are adequately mitigated against.

#### **Example**

An existing managing agent is failing to meet its obligations to the Special Measures Manager, as set out in the special measures order. The Special Measures Manager wants to ensure that all parties with which it is working mitigate against building safety risks as required by the Building Safety Bill, so it makes an application to the First-tier Tribunal to replace the existing managing agent. The Tribunal makes a finding that the existing managing agent has failed to meet the requisite obligation and considers that for the protection of residents and to enable the Special Measures Manager to adequately discharge its building safety functions it will grant an order under s.24ZA of the Landlord and Tenant Act 1987.

### **Clause 107: Amendment of order under section 24 of Landlord and Tenant Act 1987**

#### **Effect**

857 This section gives a power to a First-tier Tribunal to amend an existing order to appoint a manager for a building made under section 24 of the Landlord and Tenant Act 1987. Section 24 gives certain tenants a right to apply for the appointment of a manager, in a number of circumstances, such as when the landlord has breached its obligations under the lease. In some buildings, where a Special Measures Manager is appointed, a section 24 order may already be in place. This clause prevents an overlap of the functions of the section 24 manager and the functions of the Special Measures Manager in the respective court orders. It gives precedence to any requirement on the Special Measures Manager to carry out a function, over a function of the s.24 manager, if it relates to the fire and structural safety as set in Part 4 of the Bill. The First-tier Tribunal may amend the section 24 order to ensure that a manager appointed under section 24 is not required to perform functions that have been given to the Special Measures Manager (appointed under clause 103) in the same occupied building.

### **Proposed use of power**

858 This power will ensure there is no overlap in functions of the two types of managers in situations where two separate managers have been appointed under both this Bill and the Landlord and Tenant Act 1987, section 24.

### **Background**

859 This is a new provision.

860 Under section 24 of the Landlord and Tenant Act 1987, tenants may have the right to apply to the First-tier Tribunal for a new manager to be appointed to manage the provision of services and works at their building or development. Clause 103 of this Bill also allows for the Building Safety Regulator to make an application to the First-tier Tribunal for a Special Measures Manager to be put in place within a building in some circumstances.

861 This clause will ensure that the First-tier Tribunal appointing a Special Measures Manager can amend an order made under section 24 of the Landlord and Tenant Act 1987 so that there is no overlap in the functions of the managers where they are appointed under different legislation and to give precedence to the functions of the Special Measures Manager's functions under the Building Safety Bill.

#### **Example**

A circumstance may arise where an Accountable Person has repeatedly failed to fulfil their duties under Part 4 of this Bill in relation to an occupied higher-risk building. The Building Safety Regulator applies to the First-tier Tribunal for a special measures order to appoint a Special Measures Manager for the building to ensure that the required building safety management functions are carried out. However, it transpires that an existing manager was appointed through a section 24 order and is carrying out functions which relates to the fire and structural safety of the building. In this circumstance, the First-tier Tribunal amends the section 24 order to exclude those fire and structural safety functions from the section 24 manager's role that have been incorporated into the Special Measures Manager's functions.

### **Clause 108: Special measures order: further directions**

#### **Effect**

862 Clause 108 sets out that whilst a special measures order in relation to an occupied higher-risk building is in force, the Building Safety Regulator, Accountable Person or Special Measures Manager can apply to the First-tier Tribunal (who may give directions) to the Special Measures Manager or any other person. These directions must be in respect to any function relating to the exercise of the manager's functions, and any incidental or ancillary matter.

#### **Background**

863 This is a new provision.

864 This clause supplements clause 103 by allowing, on application, the Tribunal to give directions to the Special Measures Manager or any other person in respect to any function relating to the exercise the manager's functions, and any incidental or ancillary matter.

### Example

If the Building Safety Regulator would like the Special Measures Manager to be directed to take out professional indemnity insurance or building insurance for example, but it had been omitted from the original order, they would apply to the Tribunal to make a direction to compel the Special Measures Manager to obtain insurance. In this case that direction would be made as an incidental or ancillary matter in relation to carry out obligations under Part 4 of the Bill.

## Clause 109: Notification by regulator before applying to vary special measures order

### Effect

865 Clause 109 sets out the notification process that the Building Safety Regulator must follow where it proposes to make an application under clause 110 to vary a special measures order that is in force on a building in scope. It sets out that the Building Safety Regulator must give an initial notice of the proposal to those persons mentioned in subsection (2) which include the Accountable Person for the building, the Special Measures Manager and such other persons as listed in the subsection (2).

866 Subsection (3) prescribes the content of what must be included in the initial notice, including the way in which the notified persons can submit comments and observations, to the Building Safety Regulator about the proposed variation of the order. At the end of a specified period (set out in the initial notice), the Building Safety Regulator must decide whether to make the application and give a final notice of its decision to the persons mentioned above.

867 The Building Safety Regulator must, before making an application to the First-tier Tribunal, set out the reasons for and its decision within a final notice and if necessary, also set out the finalised details of the proposed changes to the special management order about which it will make an application to the Tribunal.

868 Subsection (7) provides that in notifying the requisite persons the Building Safety Regulator must notify those it has knowledge of and has taken reasonable steps to make itself aware of.

869 The Secretary of State has the power to make regulations amending the persons that need to be notified and setting out the requisite form and manner of notices issued by the Building Safety Regulator under this clause, as per subsection (9) and (10).

### Background

870 This is a new provision.

871 Where the Building Safety Regulator proposes to apply to the First-tier Tribunal to vary a special measures order in relation to an occupied higher-risk building, this clause ensures procedural fairness, including giving affected parties the opportunity to provide representations. The clause ensures that the Building Safety Regulator discharges its power to vary a special measures order in a fair way.

### Example

The Building Safety Regulator is working with the Special Measures Manager and they both identify that a further specific function relating to part 4 of the Bill

needs to be included in the order. The Building Safety Regulator notifies the Accountable Persons, the Special Measures Manager and persons specified in this clause, of its intention to apply to the First-tier Tribunal to vary the order and provides details on how and by when, representations can be made. The managing agent also feels that the specific function should be included in the order and provides comments on the proposal to Building Safety Regulator. The Building Safety Regulator considers these, decides to continue to apply for the variation of the special measures order at the First-tier Tribunal and issues a final notice to that effect, including its reasons and terms of variation.

## Clause 110: Variation or discharge of special measures order

### **Effect**

- 872 Clause 110 gives a power to a First-tier Tribunal to vary or discharge a special measures order made under section clause 103 following an application by the Building Safety Regulator, an Accountable Person for the building or Special Measures Manager for the building.
- 873 Subsection (2) specifies that the Tribunal may vary an order to change the identity of the Special Measures Manager only on application from the Building Safety Regulator. This does not apply where the Building Safety Regulator, an Accountable Person for the building or Special Measures Manager for the building all agree to the proposed change of Special Measures Manager.
- 874 Subsection (3) sets out factors that the Tribunal must consider before deciding whether to vary or discharge the order. Namely, whether in doing so there is a likelihood of re-occurrence of the circumstances which led to the special measures order in the first place; and whether it is just and convenient in all the circumstance to vary or discharge the order. The Tribunal does not have to consider the matters in subsection (3) where the Building Safety Regulator, an Accountable Person for the building or Special Measures Manager for the building all agree to the proposed change.
- 875 Subsection (5) provides that where a Special Measures Manager lacks the capacity to agree to any application under this clause, then that manager's agreement is not necessary in order to rely on the provisions in subsection (4).
- 876 Subsection (6) provides that where a special measures order is varied or discharged, the Tribunal may give directions to any person with respect any matter relating to the variation or discharge, and any incidental or ancillary matter.

### **Background**

- 877 This is a new provision.
- 878 In widening the powers of the First-tier Tribunal to make a special measures order and appoint a Special Measures Manager, there must also be complementary powers which enables the First-tier Tribunal to vary and discharge the special measures order made under clause 103.

### **Example**

An Accountable Person applies to the First-tier Tribunal to discharge the special measures order placed upon its building because it feels that the fire and structural risks are now managed adequately, and the residents would no longer be at risk. An assessment from the Building Safety Regulator is submitted which

shows improvements and that the Regulator is of the opinion that the contraventions will not reoccur, and the Accountable Person cooperated in the operation of the special measures order. The First-tier Tribunal discharges the order because the application for discharge is one that is made with consent of the Building Safety Regulator, the Accountable Persons for the building and the Special Measures Manager for the building.

## Clause 111: Notifications about special measures order

### **Effect**

- 879 When an order under clause 103 is made by the First-tier Tribunal to appoint a Special Measures Manager, the Building Safety Regulator must take all reasonable steps to notify each Accountable Person for the building, any Building Safety Manager for the building and other persons required by subsection (3).
- 880 When the Tribunal varies or discharges a special measures order, under clause 110, the regulator must take all reasonable steps to notify each Accountable Person for the building and such other persons detailed in subsection (3).
- 881 Subsection (4) clarifies what is meant in the clause by “relevant part”, by reference to the definition at s. 102 (8), in respect of the requirement to notify managing agents of relevant parts of the building.
- 882 Subsection (5) gives a power to the Secretary of State to amend the list of persons to be notified as, detailed in subsection (3), by way of regulations.

### **Background**

- 883 This is a new provision.
- 884 Notification about the making, varying or discharging of special measures orders ensure that the relevant persons set out in subsection (3) are aware of action taken by the Building Safety Regulator and the First-tier Tribunal’s consequent decision.

### **Example**

The Building Safety Regulator deems that a building should be placed in special measures and successfully applies to the First-tier Tribunal for a special measures order appointing a Special Measures Manager. The Building Safety Regulator must then notify each Accountable Person in the building, notify the Building Safety Manager for that building and those other persons as set out in subsection (3). Such notification is likely simply to be notifying that the court made the order and forwarding a copy of the order to those persons.

## Appeals etc

### Clause 112: Appeals against compliance notice etc

#### **Effect**

- 885 This clause sets out that a person receiving a compliance notice (as described in clause 99 above)

may appeal against that notice to the First-tier Tribunal, and that an appeal of a compliance notice that is not an urgent action notice (see 98(4)) will suspend the effect of the notice pending the resolution of the appeal (subsection (3)). As set out in the note above in respect of clause 99, given the greater seriousness of the issues justifying the issue of an urgent action notice, the clause sets out that an appeal against such a notice will not suspend its effect (subsection (4)(b)) unless the First-tier Tribunal determines that it should (subsection (4)(a)).

886 Subsection (2) sets out the grounds on which an appeal can be made, while subsection (5) provides that the recipient of a compliance notice can apply to the Tribunal for an extension of any time limit set by the regulator in the notice, whether or not an appeal is lodged.

## Clause 113: Appeals against decisions of the regulator made under this Part

### **Effect**

887 Clause 113 relates to Part 4 only, and sets out that affected persons (defined in subsection (4) of the clause) have the right to appeal certain decisions made by the Regulator.

888 These decisions are:

- where the regulator declines to register a higher-risk building or removes one from the register;
- where an application for certification is refused; and
- where the regulator gives a direction to the Accountable Person.

889 The clause also sets out on what grounds an appeal may be made.

### **Background**

890 This section provides a right of appeal for certain decisions the Regulator will make for higher-risk buildings under this legislation.

#### Example

The Building Safety Regulator has declined to issue a Building Assessment Certificate for a higher-risk building due to non-compliance with prescribed criteria. This is appealed by the Accountable Person to the First-tier Tribunal on one of the grounds specified in clause 113. The Tribunal, under clause 113, can either confirm, vary or quash the Regulator's decision.

## Clause 114: Appeals against decisions of the regulator made under regulations

### **Effect**

891 Clause 114 relates to Part 4 only, and creates a provision to give a right of appeal to prescribed persons regarding decisions made by the Regulator that are set out in secondary legislation.

### **Background**

892 This section is intended to be used to provide a comprehensive right of appeal for the decisions the Regulator will make for higher-risk buildings under this legislation that are created in regulations.

### Example

The Building Safety Regulator may wish to create new duties or requirements in regulations as the regime settles in. New duties and components will require a route of appeal. This clause provides a degree of flexibility in introducing of the building safety regime where it sees fit through the making of regulations under this Part of the Bill.

## Clause 115: Appeals: supplementary

### Effect

893 This clause is supplementary to:

- clause 112: Appeals against compliance notice etc;
- clause 113: Appeals against decisions of the regulator made under this Part; and
- clause 114: Appeals against decisions of the regulator made under regulations

894 It sets out what the tribunal can do on determining an appeal, how the tribunal must consider an appeal, and that new evidence and information can be presented.

895 The clause also allows regulations to make provision about the effect of an appeal on a regulatory decision; for example, they may provide that bringing an appeal suspends, or does not suspend, the effect of a regulatory decision.

### Background

896 This section supplements the overall package of appeal provisions for decisions made by the Regulator under this legislation.

### Example

The Building Safety Regulator has decided to remove a building from the register because it appears to the regulator that the building is not occupied. The Accountable Person for the building appeals against that decision. During the period of the appeal, regulations may specify that the building remains on the register until the appeal decision is reached.

## Clause 116: Enforcement of decisions of the First-tier and Upper Tribunal

### Effect

897 This clause ensures that tribunal decisions are enforceable. In practice, it means that any decision of the First-tier or Upper Tribunal under or in connection with Part 4 of the Bill, other than a decision ordering the payment of a sum, will be enforceable with the permission of the county court in the same way as orders of the county court.

### Background

898 The general position is that the tribunal does not have enforcement powers of its own, other than powers to enforce payment for a sum of money. As such, where it is necessary to have powers to

enforce tribunal decisions, it is usual to insert a provision in legislation to enable the county court to enforce those decisions.

### Example

The Regulator issues a direction to an Accountable Person to carry out an assessment of building safety risks under clause 83. In the event of an appeal by the Accountable Person, the tribunal's decision on the appeal can be enforced with the permission of the county court in the same way as orders of the county court.

## Miscellaneous and general

### Clause 117: Guidance

#### **Effect**

899 Clause 117 sets out the areas of the building safety regime where the Building Safety Regulator may issue guidance with statutory force, including the process to be followed in relation to the guidance and the potential consequences of complying – or not complying – with the content of that guidance.

900 Subsection (1) sets out the areas where the Building Safety Regulator may issue guidance; they are:

- how to assess the competence of a prospective Building Safety Manager;
- mandatory reporting requirements for Accountable Persons;
- duties to keep or give information to residents and others; and
- how an Accountable Person should operate a complaints procedure for residents.

901 Subsections (1), (2) and (5) set out that the regulator may issue, withdraw or amend guidance, but only with the consent of the Secretary of State. Subsection (3) makes clear that, as with the approved documents issued in accordance with Part 1 of the Building Act 1984, compliance with the guidance can be relied on in court or Tribunal proceedings as tending to establish compliance with the provision to which the guidance relates, while not following the guidance will tend to establish non-compliance with the relevant provision.

#### **Background**

902 Historically, there has always been detailed guidance (the Approved Documents) to give further detail in respect of the functional requirements set out in Building Regulations. This clause sets out those areas of this Bill where similar guidance, with statutory force, is needed to give guidance to those with duties under the new occupation regime.

### Example 1

In order to assist Accountable Persons with setting up and operating a complaints procedure for the residents of higher-risk buildings, the Building Safety Regulator will have the power to set out in guidance with statutory force the key features of such a scheme. Even if the Accountable Person does not have particular experience in operating such a scheme, if they stick to the requirements set out in the regulator’s guidance, they will have comfort that, because of subsection (3), they will be able to rely in court or tribunal proceedings on compliance with the guidance as tending to establish compliance with the legal requirements.

### Example 2

To assist Accountable Persons with appointing a Building Safety Manager (BSM), guidance on assessing the competence of a prospective BSM will provide examples of the required skills, knowledge, experience and behaviours (SKEB) and organisational capability and may make references to industry competence standards being developed.

## Clause 118: Cooperation and coordination

### Effect

- 903 Subsection (1) and (2) set out that where there is more than one Accountable Person for an occupied higher-risk building that they must, when carrying out their duties, cooperate and coordinate with all other Accountable Persons for that building as far as possible.
- 904 Clause 118 requires the Accountable Person for a higher-risk building to assist a Responsible Person who, within the same building, also has responsibilities for the fire safety of the occupants and people who might be affected by a fire. The Accountable Person must therefore cooperate with each Responsible Person so that they can carry out their duties under the Regulatory Reform (Fire Safety) Order 2005.
- 905 Responsible Person(s) are defined under Article 3 of the Regulatory Reform (Fire Safety) Order 2005.

### Background

- 906 This is a new provision.

### Example

Higher-risk buildings are often mixed use, owned and managed by more than one entity, and include commercial areas that are not for residential use, such as shops, gyms, restaurants etc. There are many different ownership models, many of them complex with different bodies responsible for managing the same or similar risks within different part of the building or its structure, such as roofs or individual floors.

To support the “whole building” approach set out in the Independent Review,

this clause requires Accountable Persons and Responsible Persons under the Fire Safety Order to work together to share relevant fire safety information.

The duty on Accountable Persons to cooperate with each other is crucial to the success of the regime in, for instance, running a single Residents' Engagement Strategy for the whole building and enabling the golden thread to operate effectively.

The Accountable Person and Responsible Person should proactively share the results of their risk assessments, including providing an overview of the risks and safety measures that are in place to control the identified risks. The Accountable Person should factor these results into their own decision making and ensure that the safety arrangements they have are suitable for controlling any additional risks that may arise from a part of the building which is out of their direct responsibility. Furthermore, both the Accountable Person and Responsible Person are dutybound to ensure that their safety arrangements do not have the effect of rendering the others' arrangements ineffective.

## Clause 119: Managers appointed under Part 2 of the Landlord and Tenant Act 1987

### Effect

907 Clause 119 makes amendments to section 24 of the Landlord and Tenant Act to ensure that building safety is kept discrete from other management functions and that any failings on the part of an Accountable Person are dealt with via the Building Safety Regulator. Accordingly, the clause provides that a tribunal cannot appoint a manager under section 24 where the breach of obligations complained of by tenants is a breach of the Accountable Person's building safety obligations. It further provides that when appointing a manager under section 24 the tribunal cannot confer upon that manager any building safety functions which are due to be carried out by an Accountable Person.

### Background

908 Section 24 of the Landlord and Tenant Act 1987 allows tenants to apply to the tribunal for appointment of a 'manager' of their choosing to take over management functions where a landlord has failed to comply with its obligations. If that principle were to be carried through into building safety, it could compromise the authority of the Building Safety Regulator. The amendments to section 24 ensure that the new regime is compatible with existing legislation and provides clarity as to avenues of redress for breach of obligations. Under the Bill, redress should be sought through the residents' complaints mechanism to the Building Safety Regulator who can arrange for the appointment of a Special Measures Manager if there have been persistent breaches of building safety obligations by the Accountable Person.

### Example

If the residents of a building are unhappy with their Accountable Person, they will be unable to circumvent the regulator by going to the Tribunal to obtain the appointment of their own manager, whose responsibilities would then overlap with those of the Accountable Person and the appointed Building Safety Manager. In the event that there are breaches of the implied building safety

terms, it will be for the Building Safety Regulator to take enforcement action and/or make arrangements for the appointment of a Special Measures Manager, as it deems appropriate.

## Landlord and tenant etc

### Clause 120: Implied terms in leases and recovery of safety related costs

#### **Effect**

- 909 This clause refers to the implied building safety terms in relevant leases. It is important to note that the implied terms relating to building safety charges are from a defined set of building safety measures set out on the face of the Bill and do not include the cost of remedial works.
- 910 All written leases set out obligations on the part of the landlord, and on the part of the tenant. These are usually in the form of ‘covenants’; the landlord covenants with (promises) the tenant to do ‘X’ and the tenant covenants with the landlord to do ‘Y’.
- 911 The Landlord and Tenant Act 1985 has implied covenants into short leases in relation to repair and human habitation. As a result, even if an agreement is signed to the contrary or if there is no written agreement, the landlord is always under an obligation to keep in repair the structure and exterior of the property and the installations for essential services in the property, and to keep the property fit for human habitation. At the same time, there is an implied covenant on the part of the tenant to grant access for repairs.
- 912 The clause amends the 1985 Act to provide new implied covenants in relation to building safety. These apply to all leases in higher-risk buildings in England.
- 913 The landlord covenants with the tenant to comply with building safety duties as an Accountable Person, to co-operate with any Accountable Person and to comply with any order appointing a Special Measures Manager, as may be applicable. The tenant covenants with the landlord to allow access for building safety purposes, to comply with the residents’ building safety duties and to comply with the terms of any order appointing a Special Measures Manager.
- 914 The clause implies additional covenants in ‘relevant leases’ – those which are for a fixed term of 7 years or over under the terms of which tenants have committed to pay a service charge which varies in accordance with the landlord’s expenditure on the upkeep of the building. The additional covenants will enable the landlord to pass on the running/management costs of the new regime to the tenant but, instead of being included in the service charge as might otherwise have been the case, this will be through the new mechanism of a ‘building safety charge’.
- 915 Detailed provisions as to the building safety charge – what costs are to be taken into account, apportionment between tenants, pre-conditions for raising demands, excluded costs, protections for tenants – are set out in a new Schedule 2 of the 1985 Act (Schedule 7 of the Bill).

#### **Details of the clause**

##### **30C implied terms relating to building safety**

- 916 This section sets out when there is an implied term (covenant) for the landlord and tenant. In the lease there is implied a covenant by the landlord:
- where the landlord is an Accountable Person for the higher-risk building, to comply

with their building safety duties;

- to cooperate with any person in connection with a relevant person complying with their building safety duties; and
- where an order made under section 101 of the Building Safety Act (2021) appointing a Special Measures Manager for the higher-risk building is in force, to comply with that order so far as it relates to the landlord.

917 In the lease there is implied a covenant by the tenant:

- to allow the landlord, a relevant person or a person authorised in writing by the landlord or a relevant person to enter the premises for a relevant building safety purpose;
- where the tenant is a resident of the higher-risk building, to comply with their duties under sections 93 and 95 of the Building Safety Act 2021; and
- where an order made under section 101 of the Building Safety Act (2021) appointing a Special Measures Manager for the higher-risk building is in force, to comply with that order so far as it relates to the tenant.

918 Sub sections (4)- (9) offer definitions for what is meant by 'cooperate', 'a relevant building safety purpose', 'building safety duty', 'relevant person' and 'resident'.

919 Sub section (6) confirms that entry is required only at reasonable times and if the tenant has been given at least 48 hours notice.

920 Sub section (7) states that the disclosure of information should not breach any obligation of confidence owed by the landlord in relation to that information and any other restriction on the disclose of information.

921 Sub section (8) confirms that the disclosure of information is not required if it would contravene data protection legislation.

### **30D Implied terms relating to building safety charges**

922 This sets out the terms (covenants) which are implied in a relevant lease of a dwelling in a higher-risk building.

923 In this section, relevant lease means a lease.

- that is granted for a term certain 7 years or more, whether or not it is (or may become) terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture; and
- under which the tenant is liable to pay a variable service charge.

924 The landlord covenants to comply with the obligations set out in paragraph 3 of Schedule 2 when requiring a tenant to pay a building safety charge.

925 The tenant covenants to pay a charge made in accordance with that Schedule.

### **Restrictions on contracting out of section 30C or 30D**

926 Provides that a covenant in a lease, or other agreement, intending to contract out, or restrict, the requirements in section 30C or 30D has no effect.

### **30F Jurisdiction of county court**

927 Provides that the county court is the court for determining any question or issue under sections 30C or 30D.

### **30G Specific performance of implied building safety term**

928 Provides that where the court orders a party to a lease to comply with the obligations (implied covenants in the lease) under section 30C(2) or (3) or 30D (2), the order can apply in relation to parts of the building not let to the leaseholder and notwithstanding any rule that would otherwise restrict a remedy.

### **30H Interpretation**

929 New section 30H explains the meaning of certain terms in sections.

### **Background**

930 This is a new clause to align the Landlord and Tenant Act 1985 with Part 4 of the Building Safety Bill. It ensures that there are dedicated provisions in relevant leases of dwellings in higher-risk buildings dealing with the putting in place and operation of building safety measures, the recovery of associated costs, where appropriate, and the securing of access to all dwellings for building safety purposes.

## **Clause 121: Provision of building safety information**

### **Effect**

931 Clause 121 amends the Landlord and Tenant Act 1987 by inserting section “47A Building safety information to be contained in demands for rent etc: England”. This places a requirement on a landlord, when giving a tenant a written demand for payment of rent, service charge, building safety charge etc, to include information about the higher-risk status of the building, the identity of the Accountable Person etc. The information required is the same as under section 49A below. If the information is not provided then, other than in respect of rent, any amounts demanded will not be treated as due until such time as the information is supplied. An exception applies where there is a court- or tribunal-appointed receiver or manager in place.

932 Clause 121 amends the Landlord and Tenant Act 1987, making it mandatory for the landlord of a dwelling in a higher-risk building to give the tenant a notice containing the relevant information by inserting “49A Notification by landlord of building safety information: England” into the Act.

933 Subsection (5) sets out that the relevant information which must be given to the tenant includes a statement setting out that premises consist of or include a dwelling in a higher-risk building, the name and contact details of: the Accountable Person, the Building Safety Manager, and the contact details of the Building Safety Regulator.

934 Where a landlord fails to give such notice to a tenant the clause states that any rent, service charge, administration charge or building safety charge due from the tenant to the landlord is not due before the landlord gives the notice to the tenant. As with clause 47A above, the exception is when by an order of any court or tribunal there is in force an appointment of a receiver or manager whose functions include the receiving of rent, service charges, administration charges or building safety charges from the tenant or where there is in force an appointment of a Special Measures Manager whose functions include the receiving of building safety charges from the

tenant.

### **Background**

935 This is a new clause to align the Landlord and Tenant Act 1987 with the Building Safety Bill. It ensures that there are dedicated provisions in place to ensure tenants of higher-risk buildings, including those who may be subletting from a long leaseholder, are adequately informed by their landlords about those that are responsible for building safety in their building.

## **Clause 122: Amendments to the Commonhold and Leasehold Reform Act 2002**

### **Effect**

936 Clause 122 amends the Commonhold and Leasehold Reform Act 2002, ensuring building safety is adequately considered.

937 In the case of land held on a commonhold basis, the commonhold association will be the Accountable Person. The clause makes amendments making it mandatory for a commonhold community statement for a higher-risk commonhold in England to make provisions requiring the commonhold association to comply with its duties under Part 4 of the Building Safety Bill in relation to each commonhold unit and in relation to the common parts.

938 It also ensures that the commonhold community statement for a higher-risk commonhold must make provision requiring the directors of the commonhold association to make an annual estimate of the income required to be raised from unit-holders to meet the building safety expenses of the association, and requiring each unit-holder to make payments in respect of the percentage of any estimate which is allocated to their unit in relation to building safety expenses.

### **Background**

939 This is a new clause to align the Commonhold and Leasehold Reform Act 2002 with the Building Safety Bill ensuring building safety and the costs associated adequately extend to higher-risk commonholds.

## **Interpretation**

### **Clause 123: Interpretation of Part 4**

### **Effect**

940 Clause 123 provides key definitions used in Part 4 of the Bill. It also clarifies that the requirements in Part 4 do not apply to the Palace of Westminster.

## **PART 5: OTHER PROVISION ABOUT SAFETY, STANDARDS ETC**

### **Remediation and redress**

#### **Clause 124: Service charges in respect of remediation works**

### **Effect**

941 This clause amends the existing section 20 consultation process in the Landlord and Tenant Act 1985. It sets out additional steps the landlord must undertake when embarking on defined

remediation works.

942 For specified remediation works, the landlord must take reasonable steps to seek other cost recovery avenues before passing on the costs to leaseholders and inform the leaseholders about what those steps were. The landlord must:

- ascertain whether any grant is payable in respect of the remediation works and if so to obtain the grant;
- ascertain whether all or any of the cost of remediation works may be met by a third party and if so to obtain monies from the third party (which is defined as including monies obtained from insurance, guarantee or indemnity or from the developer or anyone involved in designing or carrying out works on the building); and
- ascertain whether any other prescribed kind of funding is available and to obtain such funding.

943 Subsection (8) clarifies that the landlord is not required to comply with their duty to seek cost recovery avenues (subsection (2)) before carrying remediation works. Subsection (4) provides that, where funding is obtained, the landlord must reduce the remediation costs passed on to leaseholders accordingly.

944 If the landlord does not comply with the above steps, subsection (5) provides that a tenant can make an application for an order that all or any of the remediation costs are not regarded as relevant costs and therefore should not be taken into account when determining the service charge payable by the tenant or anyone else specified in the application.

945 Subsection (9) provides a power for the Secretary of State to issue guidance in relation to the steps set out in subsection (2). Subsection (10) provides that failure to follow guidance may be relied upon as tending to establish proof of failure to comply with the requirements in subsection (2), and conversely proof of following the guidance can be taken to establish that there was no such failure.

946 Subsection (11) of new section 20D offer definitions of key terms including 'remediation costs'.

947 New section 20E sets out the procedures for regulations made under new section 20D. Regulations made pursuant to new sections 20D will be made using the negative procedure.

### **Proposed use of Powers**

948 The Secretary of State will have the power to prescribe reasonable steps that a landlord must take and to set out how a landlord might demonstrate that they have met this requirement in statutory guidance.

949 The Secretary of State will have the power to prescribe additional alternative sources of funding that the landlord must explore in regulations.

950 The Secretary of State will be able to specify in regulations the information that the landlord must provide to the leaseholders about what steps they have taken, and the reasons for their course of action. This will enable leaseholders to be provided with accurate, up to date information and enable them to make informed choices and to challenge where they do not feel steps have been taken.

### **Background**

- 951 Currently there is no legal obligation on the landlord to seek alternative forms of cost recovery for remediation works before passing this to leaseholders. This clause adds new duties on the landlord to seek other cost recovery avenues to finance remediation works.
- 952 The clause amends the Landlord and Tenant Act 1985 for remediation works so that the landlord must take reasonable steps to seek other cost recovery avenues before passing on the costs.
- 953 This change to the law is being made by the Bill to give leaseholders further rights and protection in ensuring other cost recovery routes are appropriately explored and financing schemes remain affordable.

### Example

A leaseholder is given a service charge bill for a large amount of money for remediation works. The leaseholder challenges the landlord because he/she does not feel the landlord has taken reasonable steps to explore other forms of cost recovery. It transpires that the landlord has not made a claim against a warranty and the claim of the leaseholder is upheld by the First-tier Tribunal. The leaseholder does not need to pay the cost of the works until the landlord has taken reasonable steps.

## Clause 125: Duties relating to work to dwellings

### Effect

- 954 Subsection (1) of this clause amends the Defective Premises Act 1972 by inserting new section 2A into that Act.
- 955 New section 2A(1) sets out that the clause applies where a person takes on work in relation to any part of a relevant building in the course of a business. It does not apply, for example, to homeowners doing work on their own properties.
- 956 New section 2A(2) defines a ‘relevant building’ as a building consisting of or containing one or more dwellings (e.g. a house or a block of flats).
- 957 New section 2A(3) sets out that the person who takes on work to a relevant building owes a duty to the person for whom the work is done and any person who holds or subsequently acquires a legal or equitable interest in a dwelling in the building (this includes homeowners and leaseholders). The duty applies to work done directly to a dwelling, and to work done to other parts of a building (such as to the communal parts of a block of flats). The section sets out that the person undertaking the work owes a duty to ensure that, as regards the work, the dwellings in the building are fit for habitation when the work is completed. This test is also used in section 1 of the Act (in relation to the original provision of a dwelling). The phrase ‘as regards the work’ means that the person is responsible only for their own work and not any existing defects in the building (although the person will be responsible for their own work in relation to any defects which are within the agreed scope of the work).
- 958 New section 2A(4) sets out that new section 2A(3) does not apply where the existing section 1 duty applies (i.e. where work is taken on in connection with the ‘provision’ of a dwelling), or where it is expected that the dwelling will cease to be a dwelling on the completion of the work (e.g. converting flats into offices) or if the dwelling will have otherwise ceased to exist (e.g. demolition of a house).

- 959 New section 2A(5) sets out that, where a person (A) takes on work for another person (B), and it is agreed that the work will be done in accordance with instructions provided by or on behalf of B, then if A does that work properly and in accordance with those instructions, then A will have discharged the duty and no claim would be able to be brought. There is an exception where there are defects in the instructions provided by B. In this case, if A has a professional duty to inform B that the instructions are defective but fails to do so, and carries out work in accordance with the defective instructions, then A fails to discharge their duty to B.
- 960 New section 2A(6) makes clear that, for the purposes of new section 2A(5), the person commissioning the work is not treated as having given instructions just because they have agreed with the person doing the work that the work will be completed in a specified way.
- 961 New section 2A(7) sets out that, if a person doing work to a relevant building arranges for another person to take on that work (e.g. subcontracting part of a project) then those persons (i.e. the subcontractors) also owe a duty for the work they take on.
- 962 New section 2A(8) relates to the limitation period in respect of a breach of a duty imposed by new section 2A, as set out in the Limitation Act 1980, as amended by clause 126. This section sets out that the 15-year limitation period starts when the work is completed. As with a time limit under section 1, if a person subsequently does work to rectify original defective work, the 15-year limitation period starts again when that further work is finished.
- 963 Subsection (2) of clause 125 makes clear that new section 2A will apply only to work completed after the clause comes into force.

### **Effect in Wales**

- 964 Clause 125 will apply equally in Wales.

### **Background**

- 965 This clause amends the Defective Premises Act 1972.
- 966 The Defective Premises Act 1972 creates a right to claim compensation in the civil courts for defective work connected with the provision of a dwelling, where the work renders the dwelling not 'fit for habitation'. The Defective Premises Act currently extends to the 'provision' of a dwelling, meaning construction (i.e. new builds) or conversion (e.g. offices into flats). In practice, the claimant will need to show that the work made the dwelling not fit for habitation, and it is up to a court to decide based on the facts of the specific case.
- 967 The Defective Premises Act does not currently extend to work undertaken on a dwelling beyond its initial 'provision', meaning that work undertaken on existing buildings that has made the dwelling not fit for habitation does not fall within scope of the Act, even for highly complex, major works. This clause expands the right to claim compensation to any work undertaken on a dwelling, provided that work is done in the course of a business.

#### **Example**

Work to refurbish an existing block of flats is done by a contractor. As a result of that work, one or more of the flats are no longer fit for habitation. This would constitute a breach of the duty under new section 2A of the Defective Premises Act 1972 and leaseholders of the affected flats would be able to bring a claim through the civil courts against the contractor for the cost of rectifying the

defective work.

## Clause 126: Limitation periods

### Effect

968 This clause makes a number of changes to extend the limitation period (i.e. the period within which legal action must be brought) in respect of action under both section 1 of the Defective Premises Act 1972 and (the yet to be commenced) section 38 of the Building Act 1984 from the current six years to fifteen, primarily by inserting new section 4B into the Limitation Act 1980 (subsection (1)). The clause also sets out that the limitation period under new section 2A of the Defective Premises Act 1972 (see clause 125) is also fifteen years.

969 The clause also provides in subsection (3) that, in respect of section 1 of the Defective Premises Act only, the extended limitation period will apply both prospectively (i.e. in respect of future work) and retrospectively (i.e. in respect of work that has already taken place). Where a revived limitation period would last for fewer than 90 days (known as “the initial period”), subsection (4) provides that it will last for 90 days, in order to give potential claimants the necessary time to take advice and lodge a claim.

970 Where a limitation period is extended retrospectively, i.e. where a previous six-year limitation period has expired, the clause sets out two safeguards to ensure fairness in the proceedings. First, subsection (5) provides that, where a claim is lodged and the continuation of the claim would breach a defendant’s human rights, the court must dismiss the claim. Secondly, subsection (6) provides that, where a claim has previously been dismissed, the extended limitation period will not, of itself, be sufficient to reopen the claim.

### Effect in Wales

971 Clause 126 will apply equally in Wales.

### Background

972 Clause 126 is a new provision. To complement the current redress provisions for newly built homes that are being introduced through the Bill, the Government wishes to go further and extend redress provisions for existing buildings.

#### Example 1: Extended limitation period

Work on a new build block of flats is completed in 2024 and, seven years later, the leaseholders of a flat in that block find that, during the building work, there was a breach of a requirement imposed by the building regulations. Under section 38 of the Building Act 1984 the leaseholders can lodge proceedings to have their claim heard by the court within 15 years of the completion of the work.

#### Example 2: ‘Revived’ limitation period

Work on a new build block of flats was completed in 2010 and in 2019 leaseholders discovered that there were defects in the original work to the extent that the flat is unfit for habitation, potentially giving rise to a cause of action against the housebuilder under the Defective Premises Act 1972. However, the

limitation period had already expired in 2016, so no claim was brought. Due to the extension of the limitation period to 15 years, the leaseholders could now bring proceedings up until 2025.

## New Homes Ombudsman scheme

### Clause 127: Establishment of the New Homes Ombudsman scheme

#### **Effect**

- 973 Clause 127 requires the Secretary of State to arrange for there to be a redress scheme for England, to be known as the 'New Homes Ombudsman scheme', which must meet the conditions in clause 128(1), including the requirements set out in Schedule 8.
- 974 The provision gives examples of how the obligation in subsection (1) might be achieved. The scheme may be an external or 'in-house' redress scheme. For example, the Secretary of State could either select a third party to establish the scheme and maintain it, or the scheme could be an 'in-house' arrangement whereby the Secretary of State establishes and maintains the scheme directly or establishes the scheme and appoints another person to maintain it. This will provide flexibility for how the scheme is established and maintained, and who will deliver the New Homes Ombudsman scheme. For completeness, the examples set out in the provision also cover the Secretary of State having to make arrangements for transfer, to allow the scheme to be maintained by a different person to the person who established it. This might become necessary if the external scheme provider which established the scheme could no longer fulfil its contract.
- 975 In line with the flexibility around how the scheme is established and maintained, the clause also provides for flexibility in terms of funding the scheme. It allows the Secretary of State to provide financial assistance to the New Homes Ombudsman scheme, including through non-repayable forms (grants) as well as repayable forms of assistance (such as loans). In the alternative, if the scheme is procured and is not self-financing there is also provision to allow the Secretary of State to pay for the service. The intention is for the New Homes Ombudsman scheme to cover its own costs and to finance itself through fees charged to developers.

#### **Background**

- 976 This is a new provision. There is no previous provision for owners of new build homes specifically to complain to an ombudsman or redress scheme. Redress schemes already exist in relation to management, lettings and estate agency work in the private residential sector, and for social housing residents.

#### **Example**

The Secretary of State may make arrangements with a third party to establish a scheme and maintain it by way of a government procurement. There may already be a voluntary scheme in place that could bid, alongside other potential providers.

It is anticipated that an independent board incorporating the housebuilding industry, consumer groups and others will bring forward arrangements to set

up such a voluntary scheme prior to Royal Assent.

Where no suitable providers of a scheme come forward, the Government may establish a scheme itself and ask someone else to maintain the scheme. If necessary, the Government could make a loan to establish a scheme which could be recouped once fees have been received under the scheme.

## Clause 128: The New Homes Ombudsman scheme

### **Effect**

977 The scheme must meet the conditions set out in this clause and in Schedule 8.

978 The purpose of the New Homes Ombudsman scheme is to enable relevant owners of new build homes in England to make complaints against scheme members (developers) and to have such complaints investigated and determined by an individual who will act as an independent ombudsman.

979 Membership of the scheme must be open to all developers. The scheme must manage complaints made by qualifying complainants about those members. The definition of ‘qualifying complainant’ covers a person who is a ‘relevant owner’ of a ‘new build home’ in England at the time of a complaint, which is a complaint within the first two years from the first purchase of the property from the developer. ‘Relevant owner’ and ‘new build home’ are defined in clause 129. ‘Relevant owners’ include individual owners who occupy the new build home, and certain residential landlords. Complaints can be made for certain new build homes constructed or converted after the clause comes into effect, subject to further conditions in clause 129.

980 The clause does not restrict the New Homes Ombudsman scheme to receiving complaints from ‘qualifying complainants’ only. It may include provision for other people or organisations to have complaints investigated.

981 To avoid duplication, the scheme will not be required to investigate a similar complaint being dealt with under another redress scheme, such as complaints against a developer who is a member of another redress scheme. This could be where a complaint has been made to the Housing Ombudsman Service for a new build home which has not been dealt with. The New Homes Ombudsman scheme will also not be required to investigate complaints that are subject to legal proceedings. The same applies to complaints already resolved by other redress schemes or the courts.

### **Background**

982 This is a new provision. There is no previous provision for owners of new build homes specifically to complain to an ombudsman or redress scheme. Redress schemes already exist in relation to property management, lettings and estate agency work in the private residential sector, and for social housing residents.

### **Example**

An individual who owns and occupies a new build home will be able to bring a complaint against a developer who is a member of the New Homes Ombudsman scheme about the developer’s conduct and standards of work. The complaint can be raised about matters occurring within two years from the date

the home was first purchased from the developer. A complaint does not have to be made by the original purchaser, if the home has changed hands – see further below at clause 129. There is flexibility for the New Homes Ombudsman to include provision in its rules so that it can receive complaints where the purchaser wasn't an individual (for example, small organisations who purchase a new build home from a developer and do not have the capacity to pursue cases through the courts). It will be up to the New Homes Ombudsman scheme to set out who can complain to it in these circumstances. This could include prospective purchasers of new build homes who did not complete the purchase of the property as a result of a developer's actions, or it could include organisations such as smaller housing associations who bought new build homes for occupation by tenants.

### Clause 129: “Relevant owner”, “new build home” and “developer”

#### **Effect**

983 Clause 129 defines the key concepts used in clauses 128 and 129: who is a relevant owner, what is a new build home, and what is a relevant interest in land. The clause also defines who is a developer, the category used to establish who may become a member of the New Homes Ombudsman scheme.

984 The clause also allows the Secretary of State to set out, in regulations, an additional category of persons (for example by reference to their connection with a “developer” as defined in the first part of the clause), so that anyone of such a description is also a “developer” for the purpose of the legislation.

#### **Proposed use of this power**

985 If, based upon experience in administering the scheme, it transpires that alternative company structures are utilised so that the definition of a developer is inadequate and is not able to capture all those intended to be members of the New Homes Ombudsman scheme, regulations can provide additional provisions to supplement the definition under this clause, for example by adding companies connected to those fitting the definition of developer to the “developer” category in subsection 6(a).

#### **Background**

986 This is a new provision.

#### **Example: Review the definition of a developer**

The Secretary of State may review the definition of a developer after a certain period of time and decide that another category of persons should be included in it (for example where a new development or sales structure existed). This provides flexibility to ensure those who are intended to be members of the New Homes Ombudsman should be. If the Minister chooses to make regulations, a draft of the regulations will be subject to approval by each House of Parliament.

### Clause 130: Power to require persons to join scheme and provide information

## **Effect**

987 Clause 130 creates a power for the Secretary of State to make regulations which will require developers of new build homes, who are within scope, to join the scheme and remain members of the scheme for a specified period. The Secretary of State may also in regulations set out certain publicity requirements for members of the scheme, requiring developers to provide information about the scheme, which may include requiring developers of new build homes to obtain a certificate to prove or advertise their membership. The regulations may require scheme members to inform certain persons, such as purchasers of new build homes, that the New Homes Ombudsman scheme exists. In such regulations the Secretary of State may set out the framework for enforcement including: the investigation of suspected breaches in relation to these duties, conferring functions on a person in relation to sanctions and investigations, types of sanctions for failing to comply, and the right to appeal the sanctions. The clause also provides the Secretary of State with a power to make payments to any person on whom the regulations confer enforcement functions. Any person on whom the regulations confer enforcement functions may be required to have regard to statutory guidance concerning the exercise of those functions.

## **Proposed use of power**

988 It is intended that when a New Homes Ombudsman scheme is available, affirmative procedure regulations will be laid which, once approved by both houses of Parliament, will require developers to belong to the New Homes Ombudsman, and publicise their membership of the same. It is also intended that the regulations will set out how those provisions are to be enforced. The Regulations may provide exceptions to the requirement to be a member.

## **Background**

989 This is a new provision.

990 There is presently no statutory obligation upon developers of new build homes in England specifically to belong to a redress scheme, nor a way to enforce the requirements. This represents a significant gap for purchasers of new build homes.

### **Example**

Once the regulations have been approved, developers of new build homes within scope will be required to belong to the New Homes Ombudsman scheme. Developers may have to remain members of the scheme until such a time that they are no longer bound by scheme's terms. The Government may want developers to be able to confirm or prove their membership (for example, by displaying a copy of their membership in their sales offices).

The clause provides for regulations to be laid regarding the enforcement of any duties introduced by this clause. Developers that breach requirements may face civil sanctions. The regulations must allow for a right of appeal against such sanctions, for example to a court or First-tier Tribunal.

In addition, the clause allows the Secretary of State to designate the person to impose the sanctions or investigate suspected breaches of requirements. This could, for example, allow a new or existing body to undertake the enforcement role, and the clause allows the Secretary of State to make payments for that body to undertake the role. The power is flexible to take into account both the existing

and new regulatory environment.

When the Secretary of State chooses to make regulations, a draft of the regulations would be subject to approval by each House of Parliament.

### Clause 131: Register of members

#### **Effect**

991 Clause 131 places a requirement on the person who maintains the scheme to keep and publish a register of the scheme's members that can be inspected by the public at all reasonable times. This will mean that consumers can check if a developer is a member of the New Homes Ombudsman scheme.

#### **Background**

992 This is a new provision.

### Clause 132: Developers' code of practice

#### **Effect**

993 Clause 132 allows the Secretary of State to give approval to a code of practice that covers the standards of conduct and standards of quality of work which should be met by members of the New Homes Ombudsman scheme. Alternatively, if the industry or others do not come forwards with its own code, or it is not one which can be approved, the clause allows the Secretary of State to issue a code.

994 If a code is issued or approved, it must be published by the Secretary of State. If the code of practice needs adjustment or replacement in the future, there is provision to allow this to happen. The Secretary of State can revise or replace it, or approve its revision/ replacement, and again such revised or replaced code must be published. In accordance with Schedule 8, where there is a code of practice which has been issued or approved then the scheme may accept complaints about non-compliance with such a code. In considering a complaint under the scheme, whatever the issue, the scheme must have regard to any code of practice that has been issued or approved.

#### **Proposed use of power**

995 The Secretary of State is not required by this clause to issue or approve any code of practice. The ability of the Secretary of State to issue or replace a code of practice is included as a potential option only.

996 It is anticipated that an independent board incorporating the housebuilding industry, consumer groups and others will produce a code of practice governing the standards which owners can expect from a developer, in terms of the standards of conduct and standards of quality of work expected of members of the scheme.

#### **Background**

997 This is a new provision.

## Example

A code of practice may be used by developers (members of the New Homes Ombudsman scheme) and the public who buy the homes so that they are all aware of the standards that are expected. These standards could be in relation to the sales, marketing, and after-sales services expected of the developer of the new build home, and in relation to the standards of conduct and standards of quality of work expected of developers during the construction process. It is expected that if a code of practice is issued or approved by the Secretary of State the New Homes Ombudsman will require its members to follow it and will consider compliance with the code when investigating complaints.

The intent behind this provision is to create a level playing field for owners and developers alike and to allow the New Homes Ombudsman to investigate and determine complaints between purchasers of new build homes and developers in a consistent manner. If there is an approved code of practice, the New Homes Ombudsman must have regard to it when determining complaints.

In the future, once the New Homes Ombudsman scheme is set up it may be necessary to adjust the scheme and amend a code of practice. The Secretary of State may then approve, revise or replace a code of practice to reflect circumstances and practice at the time.

To enable purchasers and developers to be aware of the code of practice and expected standards, the Secretary of State will ensure it is publicised and could publish it on the Government's website or signpost to where the code of practice is published.

## Construction products

### Clause 133: Construction products

#### **Effect**

- 998 The current regulatory framework covering some construction products placed on the UK market, is derived from the EU Construction Products Regulation 2011. This regime was brought into UK law, as retained EU Law, via the European Union (Withdrawal) Act 2018. The enforcement regime in the UK is governed by the Construction Product Regulations 2013. Both sets of regulations were amended for the UK by the Construction Products (Amendment etc.) (EU Exit) Regulations 2019. They were further amended by the Construction Products (Amendment etc.) (EU Exit) Regulations 2020, implementing the Northern Ireland Protocol for construction products by enabling the continued application of the EU Construction Products Regulation 2011 in Northern Ireland and implementation of the amended retained EU law in Great Britain.
- 999 Currently this framework applies only to products with an EU harmonised standard or conforming to a European Technical Assessment (now, in the UK, a designated standard and a United Kingdom Technical Assessment). The Secretary of State has powers to add further products for the GB market. Certain other construction products where they are used by consumers may fall under the requirements of the General Product Safety Regulations 2005 for

products to be safe. There are many construction products where there is no existing EU harmonised standard, or European Technical Assessment, and they are not used by consumers – Aluminium composite material (ACM) cladding being one example and some types of fire doors another. This gap in regulation became apparent after the Grenfell Tower Fire.

1000 It is intended that all construction products which are made available on the UK market should fall under a regulatory regime. The Building Safety Bill does this in two ways, by taking powers to:

- Require construction products to be safe; and
- Create a statutory list of ‘safety critical’ construction products.

1001 This is in addition to the current regulatory regime. The Bill also creates powers enabling the Secretary of State to amend the current regime to ensure that it remains fit for purpose.

1002 This clause gives the Secretary of State the power to regulate construction products.

1003 The power applies to the whole of the United Kingdom.

### **Proposed use of this power**

1004 The power will be used to set out a detailed regime in regulations. The detail of the extent of the power is set out in Schedule 9.

1005 This power will be used by the Secretary of State to create regulations for the marketing and supply of construction products in the United Kingdom. The new regulations will work in three ways:

- a) they will create a new requirement for construction products to meet a general safety requirement;
- b) they will retain existing requirements for products which perform to a designated standard or products which conform to a technical assessment, adding some further requirements to enhance the existing market surveillance and enforcement regime, and provide for regulation of false statements made in advertising and marketing material; and
- c) they will create new requirements for a list of safety critical products (where the failure of such products would result in death or serious injury).

### **Background**

1006 The purpose of this power is to provide that construction products placed on the UK market are safe and, in the case of products subject to designated standards, technical assessments or are on the safety critical list, that they will perform to certain technical standards. For these products, where they are placed on the UK market, this will ensure reliable information is available to anybody who wishes to buy or use these products.

#### **Example**

The provisions of Schedule 9 set out the detail of how this power is intended to be used and set out below are examples of how the regulations are intended to work in practice.

## **Fire safety**

### **Clause 134: Amendment of Regulatory Reform (Fire Safety) Order 2005**

## **Effect**

1007 Clause 134 makes the following amendments to the Regulatory Reform (Fire Safety) Order 2005, ‘the Fire Safety Order’ as set out below. The Fire Safety Order applies to non-domestic premises in England and Wales. This clause extends to Wales where applicable.

1008 In 2019 the Home Office published a call for evidence to better understand how well the Fire Safety Order (FSO) works in practice and whether any changes needed to be made to it. This was followed by a public consultation on fire safety that set out initial Government proposals to respond to the findings of the call for evidence, and finally by the Government’s response to the consultation, published in March 2021, which announced the Government’s proposals to legislate to amend the FSO as set out below. The FSO imposes a range of fire safety duties on Responsible Persons (which may include building owners or managers) and the changes below largely either add to or amend these duties.

## **Recording fire risk assessments**

### **Effect**

1009 Clause 134(2) introduces a requirement for all Responsible Persons to record their fire risk assessment in full. It replaces the current requirement to only record significant findings of the assessment in specified circumstances.

### **Background**

1010 At present all Responsible Persons are required to undertake a fire risk assessment, but they are required to record the significant findings of that assessment only when they are an employer of five or more employees or where there is a licence in place, or an alterations notice under the FSO requiring this. Concern was raised during the call for evidence that it is difficult for enforcing authorities to evidence a breach of the Responsible Person’s duties under the FSO or for the Responsible Person to demonstrate compliance if the full fire risk assessment is not recorded. We are therefore introducing a requirement for all Responsible Persons to do so for all regulated premises. The Responsible Person will be able to access guidance to assist with completing and recording their fire risk assessment.

### **Example**

The Responsible Person owns an office and has only three employees. They must undertake a fire risk assessment and update it regularly for the purpose of ensuring the safety from fire of their employees and/or any visitors or customers but they do not need to record their risk assessment. Another responsible person also owns an office but has 50 employees. They must also undertake a fire risk assessment and update it regularly and, additionally, record the significant findings of the assessment, but they are not required to record the full assessment .

Under this new provision all Responsible Persons, regardless of their individual circumstances, must record their fire risk assessment in particular the findings of the assessment including measures that have or will be taken to comply with the order and any group of persons identified as being especially at risk. The intention is to ensure enforcing authorities and other relevant persons (i.e. residents or employees) have access to the full risk assessment to aid authorities

when enforcing the FSO and to provide assurance to relevant persons that fire safety risks in the building where they live or work are being safely and appropriately managed.

## **Competence of Fire Safety Professionals**

### **Effect**

1011 A new article 9A requires that a Responsible Person must not appoint a person to assist them in the undertaking or reviewing of a fire risk assessment unless that person is competent. A person is regarded as competent for this purpose where they have sufficient training, experience or knowledge and other qualities to enable them to undertake this role. This duty applies to the appointment of either an individual or a company. Where the person appointed is a company it is envisaged the Responsible Person would need to establish from the company that its staff were considered competent. Where there are two or more appointed persons, the Responsible Person must make arrangements to ensure adequate cooperation between them.

### **Background**

- 1012 The intention of Article 9A is to address the recommendations made in the Independent Review, which recommended a review of competence within fire safety critical roles, including Fire Risk Assessors.
- 1013 Building on this report, in the Call for Evidence outlined above the Home Office sought views on the existing provisions in the FSO relating to competent persons and whether they remained sufficient. Respondents highlighted concern about the variable quality of fire risk assessments and the lack of a competence requirement on those engaged by a Responsible Person to complete them.
- 1014 Proposals to address this were included in the Fire Safety Consultation which set out a new requirement on the Responsible Person that any person appointed by them to undertake all, or any part, of the fire risk assessment must be competent. 96 per cent of respondents to the consultation agreed with this proposal.

### **Example**

The provision is drafted to enable the Responsible Person to assess the level of competence required to undertake a fire risk assessment on the basis of the type of building and its complexity. The Responsible Person will be able to access guidance on how to complete or review a fire risk assessment and identify a competent person or entity to assist them.

## **Recording fire safety arrangements**

### **Effect**

1015 Article 11(2) is amended to require all Responsible Persons to record fire safety arrangements.

### **Background**

1016 At present Responsible Persons are required to implement appropriate measures for their premises to enable effective planning, organisation, control, monitoring and review in order to comply with the requirements of the Order. At present recording is required only where they employ five or more employees or where there is a licence in place, or an alterations notice under

the FSO requiring recording. We are introducing a requirement for all Responsible Persons to record fire safety arrangements to assist Responsible Persons to more easily demonstrate compliance and enforcing authorities to evidence a breach of the Order. This amendment will ensure consistency in approach with article 9A of the Order. The Responsible Person will be able to access guidance to assist their recording of their fire safety arrangements.

### Example

The Responsible Person owns an office and has only three employees. They must make and give effect to fire safety arrangements as are appropriate, having regard to the size of their undertaking and the nature of its activities, for the effective planning, organisation, control, monitoring and review of the preventive and protective measures. Another responsible person also owns an office but has 50 employees. They must make and give effect to fire safety arrangements as described above and they must record the arrangements.

Under this new provision all Responsible Persons, regardless of their individual circumstances, must record their fire safety arrangements in full. The intention is to ensure enforcing authorities and other relevant persons (i.e. residents or employees) are able to access the fire safety arrangements to aid authorities when enforcing the FSO and to provide assurance to relevant persons that fire safety issues in the building where they live or work are being safely and appropriately managed.

## **Provision of fire safety information to residents**

### **Effect**

1017 A new article 21A will require Responsible Persons to provide residents of buildings containing two or more sets of domestic premises with specific information about relevant fire safety matters. This includes information about any risks to residents of the premises identified within the risk assessment, preventative and protective measures, name and UK address of the Responsible Person, the identity of any person appointed by the Responsible Person to assist them with making or reviewing the risk assessment under article 9, the identity of any competent person nominated by the Responsible Person to implement fire-fighting and fire detection measures and any risks to relevant persons throughout the building identified by other Responsible Persons in the building. Article 21A(3)(g) also confers a power on the Secretary of State in England, and the Welsh Minister for Wales, to make regulations to extend the fire safety information that Responsible Persons must provide and to specify the format and frequency for which the information must be provided.

### **Proposed Use of Power**

1018 The proposed delegated power will ensure that the list of information in relation to relevant fire safety matters may be extended in future if required. This power will also enable the Secretary of State in England, and the Welsh Minister in Wales, to specify the frequency and format in which the information should be provided.

### **Background**

1019 Under Article 19 of the FSO a Responsible Person must provide employees with relevant

information including on any risks identified in the fire risk assessment, the identity of competent persons nominated or appointed to assist them with preventative and protective measures taken in their workplace and details of risks to relevant persons throughout the building identified by other Responsible Persons sharing or having duties in the premises. Currently, the FSO does not require that a Responsible Person should provide fire safety information to residents, with the exception of article 15(2a) in relation to in the event of serious and imminent danger to relevant persons.

1020 The Government considered how to widen the provision of information requirements, under the FSO, by extending them to include residents of buildings containing two or more sets of domestic premises. Proposals were included in the Fire Safety Consultation which set out new requirements for Responsible Persons to share fire safety information with residents of multi-occupied residential buildings. Findings from the consultation showed that 90% of respondents were supportive of the proposals.

### Example

Responsible Persons for of buildings containing more than two sets of domestic premises will be required to provide information about relevant fire safety matters to residents in their buildings. The intention of this provision is to ensure that residents have access to relevant fire safety information about the building where they live to help ensure they are safe and feel safe in their homes.

## Co-operation and co-ordination between Responsible Persons

### Effect

1021 Article 22 of the Fire Safety Order requires Responsible Persons, where there is more than one responsible for a premises, to co-operate with each other and co-ordinate their actions to ensure compliance with the order. In addition to their existing duties under this article, Responsible Persons will now be required to take reasonable steps to establish whether any other Responsible Person in the premises shares, or has, duties in respect of the premises. If they do they must also inform each other of their name, UK address and the parts of the premises for which they consider themselves to be Responsible Person and keep a record of that information.

### Background

1022 Respondents to the call for evidence raised concern about Responsible Person's compliance with the duty to cooperate and coordinate with other Responsible Persons in multi-occupied premises (as set out in Article 22 of the FSO). Respondents highlighted problems with Responsible Persons being unaware of their duties under the Order and challenges for enforcing authorities in identifying relevant Responsible Persons and establishing whether or not there has been co-operation. It is considered that requiring Responsible Persons to identify themselves to other Responsible Persons in the same premises by informing each other of their name and UK address as well as providing a view on the parts of the premises they consider themselves to be Responsible Person will encourage co-operation and assist enforcing authorities to identify the correct Responsible Persons and to establish whether the duty to co-operate has been complied with.

1023 The Fire Safety Consultation included a proposal to require all Responsible Persons to record and, as necessary, update who they are, the extent of their responsibility under the Fire Safety

Order and their contact information. 92% of respondents to the Fire Safety Consultation agreed with this proposal.

1024 The consultation also included a proposal to require Responsible Persons to take reasonable steps to identify themselves to all other Responsible Persons. 95% of respondents agreed with this proposal.

1025 We are therefore amending Article 22 of the Fire Safety Order to require that all Responsible Persons for premises regulated under the Order must establish whether any other Responsible Person in the premises shares, or has, duties in respect of the premises and to inform each other of their name, address and parts of the premises they consider themselves to be Responsible Person for. To inform and support Responsible Persons in discharging this duty, best practice will be provided in guidance.

### Example

This is a hypothetical example. In a block of residential flats which is ten storeys high and has a supermarket on the ground floor, there may be one Responsible Person for the supermarket, another for floors 1-5 and another for floors 6-10. While they each have a specific area within the building for which they are Responsible Person, they must work together to ensure any fire safety actions they take complement those of the other two and do not in any way hinder any fire safety actions taken by each other. For example, the Responsible Person in the supermarket must not block entry and exit to the floors above by storing stock in a stairwell. Each Responsible Person must take reasonable steps to identify the other Responsible Persons, provide them their name and address and an explanation of the parts of the premises they consider themselves to be Responsible Person to strengthen co-operation throughout the building.

## Information sharing between successive Responsible Persons

### Effect

1026 A new article 22A will require departing Responsible Persons to provide relevant fire safety information to incoming Responsible Persons. Relevant fire safety information means: (a) records kept under article 9(6) of fire risk assessments and reviews under article 9; (b) the identity of any person appointed by the Responsible Person to assist them with making or reviewing the fire risk assessment; (c) the identity of any other persons who are Responsible Persons in relation to the premises (where known); (d) where the premises consist of or include a higher-risk building under the Building Safety Act, the identity of any other Accountable Persons in the premises (where known); (e) any information provided to the Responsible Person under regulation 38 of the Building Regulations 2010 (S.I. 2010/2214) (this is information provided to the Responsible Person by the person carrying out building work following completion or occupation relating to the design, construction, services, fixtures and fittings to assist the Responsible Person to operate and maintain the building safely). This article also includes a regulation making power for the Secretary of State in England, and the Welsh Minister for Wales, to enable them to extend the relevant fire safety information that must be provided as well as to specify how frequently all of this information should be provided and in what format.

### Proposed use of Power

1027 The Secretary of State in England, and the Welsh Minister in Wales, will have the power to make regulations to extend the fire safety information that departing Responsible Persons will be required to provide to incoming Responsible Persons, and to specify the format and frequency within which the information must be provided.

### **Background**

1028 To maintain a clear thread of information central to ensuring fire safety across the entirety of a building's lifetime, the Fire Safety Consultation included a proposal to amend the FSO to require Responsible Persons to take reasonable steps to share all relevant fire safety information with subsequent Responsible Persons. 95% of respondents to the consultation agreed with this proposal. We are therefore seeking to amend the FSO to deliver this.

1029 A new Article 22A will apply to all premises under the FSO. All departing Responsible Persons of these premises must provide the relevant fire safety information specified in a new Article 22A(3) to incoming Responsible Persons before they depart. It is intended that this requirement will facilitate the preservation of relevant fire safety information between successive Responsible Persons across the lifetime of a building. This compliments the 'Golden Thread' provision for Accountable Persons in the Building Safety Bill.

### **Example**

The departing Responsible Person must obtain and provide information to the incoming Responsible Person, in an auditable way, before they are no longer the Responsible Person. If the departing Responsible Person is not able to identify the incoming Responsible Person it is envisaged, they should ascertain the identity with the building owner and/or manager of the building and then provide the relevant fire safety information to the incoming Responsible Person, or, failing that, they should provide the relevant fire safety information to the owner of the building. The owner of the building, as Responsible Person, should then make arrangements to provide this information to the incoming Responsible Person.

## **Co-operation and co-ordination between Responsible Persons and Accountable Persons**

### **Effect**

1030 A new article 22B will apply to premises consisting of or including a residential unit in a higher-risk building (a building in England that (a) is at least 18 metres in height or has at least 7 storeys, and (b) contains at least 2 dwellings or any units of living accommodation) and require Responsible Persons for such premises to co-operate with Accountable Persons in the premises to enable them to carry out their duties under the Building Safety Act (2021). There is a reciprocal duty of co-operation between Accountable Persons and Responsible Persons in section 117 of the Building Safety Act 2021.

### **Background**

1031 This is a new provision. This requirement applies to all Responsible Persons for premises in a higher-risk building. For buildings subject to the Building Safety Act (2021), the Responsible Person(s) must take reasonable steps to identify any Accountable Person(s) in the building and

cooperate with them for the purpose of carrying out their respective duties to collectively manage building and fire safety for the entire building. The purpose of this requirement is to ensure that the duties of Responsible Persons and Accountable Persons will contribute towards a whole-building approach to building and fire safety.

### Example

Where the Responsible Person is also the Accountable Person, they must ensure that they comply with the requirements of the FSO for the common parts while this should also contribute towards their management of safety for the whole building. For example, the fire risk assessment for the common parts of the building could contribute to the safety case report, and the provision of fire safety information to residents could complement or support the residents engagement strategy required under the building safety regime.

The same will be expected where the Responsible Person and Accountable Person are not the same person and where there are multiple Responsible Persons and/or Accountable Persons, the Responsible Person must identify themselves to the other(s) in order to be able to discharge their cooperation duty and for the purpose of enabling the Accountable Person to carry out their duties.

In practice, the Responsible Person should make the Accountable Person aware of fire safety risks identified and precautions taken in the common parts of the building.

## Fines

### Effect

1032 Article 32(4) and (7) of the FSO set out the financial penalties available for criminal offences of failing to comply with requirements relating to the installation of luminous tube signs, failing to comply with any requirements imposed by an inspector, under article 27(1)(c) or (d), and impersonating an inspector. At present these offences are subject to a maximum of level 3 fines but the amendment will increase this to unlimited fines.

### Background

1033 This clause amends Article 32 (4) and (7) of the FSO. We are introducing these changes further to the information gathered in the Call for Evidence and following the public response to proposals set out in the Fire Safety Consultation. Furthermore, these changes will make the FSO consistent with similar offences in other legislation such as the Building Safety Act 2021 Bill and the Health and Safety at Work Act. Financial penalties for criminal offences in the FSO have historically been lower than similar offences in the Building Act. Increasing the level of fines for these three offences in the FSO to the same level as for other similar offences will encourage compliance.

1034 This amendment to the level of financial penalty that may be imposed for these offences enables the Magistrates Court, when prosecuting for these offences under the FSO to apply a higher level of fine for the most serious offences. Accordingly, this ensures these offences carry a suitable deterrent to discourage non-compliance with the Order.

### Example

As an enforcing authority for the FSO, Fire and Rescue Authorities undertake routine building inspections to ensure compliance with the Order. The Inspector can take enforcement action when non-compliance has been identified, and prosecution action may be taken against the Responsible Person or dutyholder. If that person is found guilty, the Magistrates' Court may decide to impose a fine.

By increasing these fines from a level 3 (£1,000) to unlimited, the Court is provided with a greater range of penalty to impose to reflect the severity of the offence. Through this change a court, after considering the evidence presented, will have the ability to impose unlimited fines for the most serious offences.

## Article 50 Guidance

### Effect

1035 Article 50 of the FSO requires the Secretary of State to ensure that such guidance as he considers appropriate to assist Responsible Persons to discharge their duties under the FSO is made available to them. Article 50 was previously amended in the Fire Safety Act 2021 to provide that in proceedings for breach of the FSO (for buildings in England containing two or more sets of domestic premises) proof of failure to comply or compliance with applicable risk based guidance may be relied upon as supporting whether or not there was a breach of the Order. Further amendment in article 50(1A) will apply this provision to all guidance issued in accordance with article 50.

### Background

1036 Currently under Article 50, the Secretary of State is required to make sure that such guidance as he considers is made available to assist Responsible Persons with discharging their duties under the FSO. Responses to the 2019 call for evidence and the Fire Safety Consultation have indicated that guidance should be strengthened to encourage compliance and to make clear what is statutory guidance. Article 50 guidance is made available to assist responsible persons to discharge their duties under the Order. It also reflects a similar approach to guidance under the Building Safety Bill.

### Example

Responsible Persons can follow guidance issued under Article 50 to assist with discharging their duties under the FSO. Even if they do not have particular experience in an element of their duties, if they follow the relevant guidance related to that duty they will have comfort that in the event of any breach of the FSO the Court may consider their compliance with the guidance as tending to support compliance with the relevant duty under the FSO.

## Architects

### Clause 135: Architects: discipline and continuing professional development

## **Effect**

### **Discipline**

1037 Clause 135 allows the disciplinary orders made against architects by the Professional Conduct Committee (PCC) of the Architect Registration Board (the Board), the statutory regulator of architects in the UK, to be listed alongside an architect's entry in the Register of architects. This is to provide greater transparency to members of the public procuring architectural services as the Register entry, accessible through the Board's website, will show whether an architect has been disciplined recently. The Board will determine rules for the length of time that a disciplinary order will be listed on the Register, depending on the severity of the order.

### **Continuing professional development**

1038 Clause 135(3)(a) and (3)(b) allow the Board to monitor the competence of architects throughout their Registration. This power will allow the Board to determine which practical experience or training should be assessed and how the assessment should take place. The Board must consult professional bodies and other stakeholders before introducing a competence regime.

1039 If an architect does not meet the requirements set out by the Board, or the Board is not satisfied that the person has met the requirements to a sufficient standard, the individual may be removed from the Register.

1040 Clause 135(3)(c) allows the Board to determine a period of extension for an individual architect to complete their recent training. The clause also sets out the conditions for when the Board can remove an architect from the Register, including if the individual has not requested an extension or if the Board remains unsatisfied with the standard of competence demonstrated.

## **Background**

### **Discipline**

1041 This is a new provision to increase transparency for those procuring architectural services, in line with wider reform for greater assurance of competence of built environment professionals.

1042 Disciplinary orders are published on the Board's website under "Previous PCC decisions", with separate lists for 'current' and 'spent' orders. These lists show all cases heard by the PCC since 1997 and include the date, architect, nature of offence and penalty imposed. This website is not easy to navigate and does not display the information to the public in a transparent way.

### Continuing professional development

1043 Sections 4(1) and 4(2) of the Architects Act 1997 provide broad powers for the Board to determine the criteria and process for registering as an architect in the UK. The Architects Act does not provide powers for the Board to scrutinise competence after the initial registration and throughout an architect's career unless an allegation of unacceptable professional conduct is brought before the Board. This means that an architect may be practicing for a prolonged period without any further proactive regulatory oversight.

1044 This provision will apply to all architects on the Register, not only those working on higher-risk buildings, due to the public safety aspect of all construction. Most other regulated professions require their registrants to demonstrate competence throughout their career and most professional membership bodies have mandatory Continuous Professional Development requirements. This proposal brings the architects profession in line with best practice and gives greater assurance to those procuring and inhabiting buildings.

### Example 1: Discipline

An architect is found guilty of unacceptable professional conduct by the PCC and is reprimanded but able to continue practicing. When a member of the public searches for this architect on the Register, there will be a note on the architect's entry stating that they have been reprimanded. This will be listed for a period of time determined by the Board depending on the severity of the order. Once this time period has lapsed, the note on the architect's Register entry will be removed.

If an architect is issued with an erasure order then their name is removed from the Register. They may reapply for re-entry no less than two years from the date of erasure (or longer if so specified by the PCC). The Board will decide as part of the prescribed Rules whether the original disciplinary order will be marked on the Register if the sanctioned individual should obtain restored registration.

### Example 2: Continuing professional development

The exact requirements for the assessment of practical experience or training will be determined by the Board following a full review and consultation. This review was commenced in March 2020.

## Clause 136: Power of Architects Registration Board to charge fees

### **Effect**

1045 Clause 136 allows the Secretary of State by regulations (subject to the negative procedure) to make provision for the services for which the Board may charge a fee. Regulations will set out the services, or types of services, in respect of which the Board may charge a fee. Regulations will also make provisions about the persons who are liable to pay a fee, and how fees charged by the Board are to be calculated and how they are to be paid.

### **Background**

1046 Currently, the Architects Act 1997 prescribes a small amount of services for which the Board may charge. The costs of all of the Board's functions are currently met by the annual fee for retention on the Register of Architects under section 8 of the 1997 Act, which is charged by the Board to all architects. Following the end of the EU Exit Transition Period, there will be an expansion in the services the Board provides to implement Mutual Recognition Agreements or Memoranda of Understanding relating to the regulation of architects. This clause will allow the Secretary of State to lay regulations to make additional provision for separate fees for additional chargeable services, in order to keep the retention fee down for the architects that do not utilise additional services. This will be after a full impact assessment and consultation.

### Example

This will be determined in secondary legislation, The services that will be considered for charging fees are the Board's role in considering and recognising international qualifications, and the Board's function in providing evidence for

## Housing complaints

### Clause 137: Housing complaints made to a housing ombudsman

#### **Effect**

- 1047 Clause 137 enables social housing complainants to escalate a complaint to the Housing Ombudsman service directly, by removing the existing requirement ('the democratic filter') to make their complaint via a 'designated person'. A 'designated person' may be an MP, Councillor or recognised tenant panel.
- 1048 The new paragraph inserted into the Housing Act 1996 (1A) retains the existing procedures that a resident who wishes to escalate a complaint to the Housing Ombudsman Service first needs to have completed their landlord's own complaints process.
- 1049 Removing the democratic filter seeks to improve and expedite access to the Housing Ombudsman Service (HOS) for social housing complainants who have exhausted their landlord's internal complaints procedure and still have unresolved complaints. The objective is to promote equity of provision for those seeking redress in the social housing sector with those in other tenures which are not subject to a democratic filter process.
- 1050 This should speed up redress for social housing complainants as well as creating equity of provision.

#### **Background**

- 1051 This provision applies to England only.
- 1052 The requirement to refer a complaint through a designated person/tenant panel, introduced in the Localism Act 2011, was intended to strengthen the accountability of landlords, enable housing complaints to be resolved using local knowledge and help to reduce the number of formal investigations by the Housing Ombudsman Service.
- 1053 Through amendments made by The Localism Act 2011 (section 180), a role was given to 'designated persons' in dealing with disputes between members of the Housing Ombudsman Scheme and their tenants/leaseholders. This was in circumstances where complaints had not been resolved in the landlord's procedures and before they could be referred to the Housing Ombudsman. It meant that a complaint against a social landlord cannot be 'duly made' (formally submitted for investigation) to the Housing Ombudsman unless it is made in writing to the Ombudsman by a designated person by way of referral of a complaint made to the designated person.
- 1054 A designated person can be an MP, a Councillor or a recognised tenant panel. It means that currently, if, after a landlord's internal complaints process has been exhausted, the complaint is still not resolved, a complainant (whose landlord is a member of the Housing Ombudsman Scheme) has to refer any outstanding complaints to a designated person before a complaint can be formally referred to the Housing Ombudsman Service. Alternatively, a complainant must wait eight weeks after their complaint has exhausted the landlord's complaints process before they can formally refer their complaint to the Housing Ombudsman Service.
- 1055 This is known as the democratic filter. It has been criticised for undermining consumer

empowerment and is counter to the principles of the ombudsman institution. The Housing Ombudsman's own consultation also uncovered concerns and found that while some local 'designated person' arrangements work well, in many cases they do not, and that there were designated persons who did not fully understand their role.<sup>1</sup>

1056 It also emerged that in some areas tenant panels either do not exist or are not used. Removing the democratic filter was supported by the majority of respondents when the Housing Ombudsman Service consulted on its Corporate Plan 2019-22 and Business Plan 2019-20, with low support being expressed for the designated person role.

### Example: New complaints process

#### **Current process**

A resident makes a complaint to their landlord and completes the landlords complaints/dispute process.

The resident remains dissatisfied and decides to escalate the complaint to redress level and to the Housing Ombudsman Service. They contact a designated person for assistance (the Democratic Filter). If the designated person is unable to help, after 8 weeks from the landlord's decision they then refer the complaint to the Housing Ombudsman Service.

#### **Following removal of the democratic filter**

Again, a resident makes a complaint to their landlord and completes the landlords complaints/dispute process.

The resident remains dissatisfied and decides to escalate to redress level and contacts the Housing Ombudsman Service directly, asking them to investigate their complaint.

## **PART 6: GENERAL**

### Clause 138: Liability of officers of body corporate etc

#### **Effect**

1057 Clause 138 provides that, where a corporate body commits a criminal offence under Parts 2 or 4 of this Bill, any director, manager, secretary or other similar officer of that body is also deemed to have committed that offence in certain circumstances. Those circumstances are where the individual has consented to or connived in the commission of the offence or where the offence is

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<sup>1</sup> <https://www.housing-ombudsman.org.uk/about-us/corporate-information/publications/our-consultations>

attributable to any neglect on their part. Clause 39 makes similar provision in respect of the criminal offences in the Building Act 1984.

### **Effect in Wales**

1058 The clause will apply in Wales.

### **Background**

1059 Many of those persons carrying out duties under the Building Act 1984 and the new regime are and will be corporate bodies rather than individuals. As a corporate body operates only by and through the actions of its employees, including managers and directors, if there is an offence by a body corporate, then there is likely also to be some measure of personal failure by one or more individuals, particularly those in a position to make critical decisions.

1060 It will be appropriate to consider what evidence has been obtained against the company and the director or senior manager, taking into account the management arrangements. One purpose of bringing a prosecution under this clause should be to bring home the importance of building safety responsibilities to those directing companies.

1061 Where there is sufficient evidence and the public interest test is met, prosecutions could be brought against directors/managers as well as prosecuting the company for an offence under the relevant statutory provisions, even where there is a sole director. This would not be regarded as prosecuting the same person twice, as the two are separate legal entities. Should both matters result in a conviction, it will be for the sentencing court to sentence the individual(s) and the corporate body appropriately.

1062 Clause 138 has been modelled on section 37 of the Health and Safety at Work Act 1974.

#### **Example**

If an Accountable Person allows a higher-risk building for which they are responsible to be occupied before an application to register the building was made to the Building Safety Regulator, that would be an offence under Clause 72. If the Accountable Person was a corporate body and there was evidence that a particular director or manager had made the decision to allow the building to be occupied, that director or manager could be prosecuted as well as or instead of the corporate body.

## **Clause 139: Review of regulatory regime**

### **Effect**

1063 This clause sets out a mandatory process for the Secretary of State to periodically appoint an independent person to review the effectiveness of the building regulatory regime and the system of regulation for construction products.

1064 The clause provides a deliberately non-prescriptive framework to allow the reviewer to operate independently. The reviewer can choose how much to focus on each area of review; so, for example, if some of the areas listed in the clause seem to be operating well and others less well, the reviewer can choose to prioritise reviewing the areas that are operating less well.

1065 In the first instance, the Secretary of State must appoint an independent reviewer within five years of the Act being passed. Subsequent appointments must be made within five years of the

day on which the most recent appointment was made.

1066 The Secretary of State must ensure the person is independent from the Secretary of State, the Building Safety Regulator, the building control profession, the built environment industry, the construction products industry, and local authorities.

1067 The Bill sets out the specific matters the independent person must review, which taken together encompass the key elements of the building regulatory system and the construction products regulatory system:

- The effectiveness of the Building Safety Regulator;
- The effectiveness of the UK wide system for the regulation of construction products;
- the adequacy and effectiveness of the provisions of the Building Act 1984 as it pertains to England, barring new section 105C;
- The adequacy and effectiveness of Parts 2 and 4 of the Building Safety Bill (these relate to the Building Safety Regulator's powers and functions, and the new, more stringent regulatory regime for higher-risk buildings in occupation);
- Any connected matters, to be determined by the independent person; and
- Any other matters specified in the appointment itself.

1068 The clause does not allow the Secretary of State to limit the considerations of the reviewer.

1069 Once the review is complete, the independent reviewer must submit a written report to the Secretary of State explaining the outcome of the review and provide any recommendations for improvement where appropriate. The Secretary of State is required to publish a copy of this report.

### **Background**

1070 This is a new provision.

1071 The Independent Review recommended for there to be a periodic review (at least every five years) of the effectiveness of the overall system of building regulation including accountabilities, responsibilities, guidance, and the effectiveness of the regulator.

#### **Example**

Approaching the five-year mark of operating the new building regulatory regime, the Secretary of State feels that a proportionate amount of time has passed to allow the system to be reasonably assessed. The Secretary of State must identify and appoint a person who, in their view, meets the statutory independence test included in the clause.

The Secretary of State may consider that there are issues that might impact building safety, but that are beyond the remit of the review as set out in subsections (1)(a)-(c). In this instance they can instruct the independent person to consider additional matters, under subsection (1)(e).

During the review, the independent person may observe that there are non-legislative matters of interest connected to the effectiveness of the Building Safety Regulator that impact the effectiveness of the system. The reviewer would be able to consider these matters as part of the review and make recommendations about them.

The reviewer might consider parts of the regulatory regime to be functioning effectively. If that is the case, the reviewer may choose to deal with that area much more briefly in their report.

At the end of the review, the independent reviewer will need to submit a written report to the Secretary of State detailing the outcome of the assessment. At this stage, the reviewer may have noted various areas for improvement within the system. The reviewer must detail these recommendations for improvement in the report that they submit to the Secretary of State. The Secretary of State must publish a copy of this report.

### Clause 140: Financial Provision

1072 This clause recognises that, as a matter of House of Commons procedure, a financial resolution needs to be agreed for this Bill.

### Clause 141: Crown Application

#### **Effect**

1073 Clause 141 provides for Parts 2 and 4 of the Bill of the Bill to bind the Crown with the exceptions of clauses 99 and 100 which deal with compliance notices and Clause 112 which deals with appeals against compliance notices.

1074 Clause 141 also provides for provisions relating to the New Homes Ombudsman in clauses 127 to 132 and Schedule 8 to apply to the Crown.

1075 Clause 141(2) sets out that the Crown is not liable for any offences under these provisions. Crown servants can be liable as individuals (clause 141(3)), and clause 138, which provides for the liability of officers of corporate bodies, binds the Crown.

#### **Background**

1076 The Fire Safety Order and the Health and Safety at Work Act 1974 already apply to the Crown. This clause will apply the relevant parts of the Bill to buildings owned or managed by the Crown Estates, Government Departments or other Crown bodies. The Bill does not distinguish between buildings held in the right of the Crown or in the private interests of the Queen or Duke of Cornwall which might fall in scope.

1077 As is usual practice, this clause provides that the Crown cannot be criminally liable, but individual Crown servants can be.

1078 The clause does not cover Part 3 of the Bill, because section 44 of the Building Act 1984 already provides for the application of that Act, and building regulations, to Crown buildings and bodies, though this has yet to be commenced.

1079 The Building Safety Regulator will have the power to regulate Crown buildings. It is intended

that the Crown Premises Fire Safety Inspectorate (CPFSI) will participate in multi-disciplinary teams for Crown buildings, rather than the relevant fire and rescue authority, because the CPFSI is the enforcing authority for the Fire Safety Order for Crown buildings. Under Schedule 3, the CPFSI (referred to as 'FSO authorised persons') is included within the duty of cooperation, and information sharing gateway, with the Building Safety Regulator.

### Example

For higher-risk Crown buildings, the relevant Crown body may be the Accountable Person for the building, if it satisfies the definition in clause 69. If that is the case, the Crown body will be responsible for the duties falling on the Accountable Person, for example, registering the building and securing the building assessment certificate, drawing up a safety case for the building and ensuring that measures are in place to manage fire and structural safety risks, maintaining the golden thread of building safety information and putting in place a residents' engagement strategy.

## Clause 142: Power of Secretary of State to make consequential provision

### **Effect**

1080 Clause 142 confers on the Secretary of State a regulation-making power to make consequential amendments which arise from this Bill or regulations made under it. Regulations that make consequential provision may amend, repeal or revoke an enactment. Any regulations that amend or repeal primary legislation are subject to the affirmative procedure. Any other regulations under this clause are subject to the negative procedure.

## Clause 143: Power of Welsh Ministers to make consequential provision

### **Effect**

1081 Clause 143 confers on the Welsh Ministers a regulation-making power to make consequential amendments which arise from Part 3 of this Bill, and clause 134, or regulations made under them. Regulations that make consequential provision may amend, repeal or revoke an enactment. Any regulations that amend or repeal primary legislation are subject to the affirmative procedure. Any other regulations under this clause are subject to the negative procedure.

## Clause 144: Regulations

### **Effect**

1082 Clause 144 ensures that regulations made under the Building Safety Bill can include any consequential amendments as well as transitional provisions and cover any other incidental matters.

1083 This clause also provides that regulations made under this Bill are to be made by statutory instrument and sets out which sets of regulations require the affirmative procedure.

## Clause 145: Extent

### **Effect**

1084 Clause 145 details the territorial extent of the provisions in the Bill. See Annex A for additional

detail.

## Clause 146: Commencement and transitional provision

### **Effect**

1085 Clause 146 is self-explanatory.

## Clause 147: Short title

### **Effect**

1086 Clause 147 is self-explanatory.

# Schedule 1: Amendments of the Health and Safety at Work etc Act 1974

### **Effect**

1087 This Schedule makes a number of amendments to the Health and Safety at Work etc Act 1974 to support the formation of the new Building Safety Regulator within the Health and Safety Executive.

1088 Paragraph 2(2) amends section 11(5) of the Health and Safety at Work etc Act 1974 to exclude the Health and Safety Executive's new Building Safety Regulator "building functions" from the existing requirements for the Health and Safety Executive to agree how it undertakes its activities with the Secretary of State. This change reflects the new requirement under clause 17 and clause 18 for the Building Safety Regulator to produce a strategic plan exclusively in connection with its building functions. Paragraph 2(3) makes a minor consequential amendment.

1089 Paragraph 3 inserts a new section 11A into the Health and Safety at Work etc Act 1974. Subsection 11A(1) is intended to give the Health and Safety Executive the power to determine how it delivers its building functions. New subsection 11A(2) illustrates the types of activity the Health and Safety Executive could undertake using this power, such as encouraging compliance with the new regime, undertaking research or providing training. New subsection 11A(3) enables the Health and Safety Executive to set up committees relating to the building functions, and pay committee members for their work.

1090 Paragraph 4 amends section 12(3) of the Health and Safety at Work etc Act 1974, which creates the Secretary of State's power to direct the Health and Safety Executive. Section 12(3) provides a safeguard around the use of the power to direct by precluding the Secretary of State from issuing any directions relating to enforcement in a particular case. The amendment ensures this safeguard also applies in relation to the Health and Safety Executive's new building functions.

1091 Paragraph 5(2) clarifies the existing provision in section 13(3) of the Health and Safety at Work etc Act 1974 allowing the Health and Safety Executive to make agreements with others to enable them to carry out Health and Safety Executive functions. The clarification makes clear that any such functions would be carried out by another person (such as an employee of a Local Authority or a fire and rescue authority) on behalf of the Health and Safety Executive. Paragraph 5(3) makes a similar clarificatory amendment to the existing provision in section 13(4) of the Health and Safety at Work etc Act 1974, allowing the Health and Safety Executive to make agreements with

Ministers, Government departments and public authorities for the Health and Safety Executive to carry out their functions. The clarification makes clear that any such functions would be carried out by the Health and Safety Executive on behalf of the Minister, Government department or public authority.

- 1092 Paragraph 5(4) makes a minor consequential amendment. Paragraph 5(5) excludes the building functions from provisions in relation to committees of the Health and Safety Executive in section 13(7) of the Health and Safety at Work etc Act 1974; this reflects that new section 11A(3) of the Health and Safety at Work etc Act 1974 makes specific provision for committees to be set up to support the building functions.
- 1093 Paragraph 6 amends section 27 of the Health and Safety at Work etc Act 1974. The effect is to exclude the Health and Safety Executive's new Building Safety Regulator functions from provisions enabling the Health and Safety Executive to serve notices for the purpose of obtaining information pertinent to the discharge of its functions. Paragraph 4 of Schedule 2 of this Bill provides authorised officers of the Building Safety Regulator with specific powers by which they may obtain information relevant to the Building Safety Regulator's building functions. Therefore, it is not necessary for section 27 to apply in respect of the Health and Safety Executive's building functions.
- 1094 Paragraph 7, which amends section 53, makes clear the meaning of 'building functions' and 'building enactments' in the Health and Safety at Work etc Act 1974.
- 1095 Paragraph 8(2) amends paragraph 2(3)(d)(iii) of Schedule 2 to the Health and Safety at Work etc Act 1974. This paragraph sets out the arrangements for the Secretary of State to make appointments to the Health and Safety Executive (commonly referred to as the Health and Safety Executive Board), including requirements for certain members to be appointed after consultation with organisations representing employers, employees and local authorities. Paragraph 2(3)(d)(iii) (before amendment) enables the Secretary to appoint four "other members" of the Health and Safety Executive Board after consultation with the Scottish Ministers, the Welsh Ministers, or such organisations as the Secretary of State considers appropriate. The amendment will ensure that the Secretary of State can use the power under 2(3)(d)(iii) to appoint members of the Health and Safety Executive Board after consulting with organisations whose activities relate to building safety, building standards or fire safety. This amendment is intended to ensure that Health and Safety Executive Board members can be appointed because of their building safety, building standards or fire safety expertise, so that the Health and Safety Executive Board has the experience and skills necessary to effectively oversee the new building functions.
- 1096 Paragraph 8(3) amends paragraph 9(3)(b) of Schedule 2 to the Health and Safety at Work etc Act 1974. This provision excludes members of the Health and Safety Executive Board, or any committee of the Health and Safety Executive Board, from making decisions concerning the enforcement of the relevant statutory provisions in any particular case. The amendment extends this safeguard to cover enforcement of building functions.
- 1097 Paragraph 8(4) operates alongside clause 28 to confirm that staff from within the Health and Safety Executive or other organisations working with the Health and Safety Executive may sign documents on behalf of the Executive, where they have been authorised to do so. This provision might be used to enable certain members of staff from local authorities or Fire and Rescue Services to sign documents on behalf of the Building Safety Regulator, where those organisations have been requested to provide support to the Building Safety Regulator under clause 13.

## **Background**

1098 Schedule 1 amends provisions in the Health and Safety at Work etc. Act 1974 to enable the establishment and work of the new Building Safety Regulator.

## **Schedule 2: Authorised officers: investigatory powers**

### **Powers of Entry**

#### **Effect**

- 1099 Paragraph 1 of this Schedule makes available to authorised officers (as defined and appointed under clause 21) the power to enter non-domestic premises, with the support of relevant individuals (such as constables if there is a concern of obstruction) if necessary. Entry may be made only at a time that is reasonable – or at any time if the authorised officer suspects that a dangerous situation exists.
- 1100 Paragraph 2 allows a justice of the peace (magistrate) to issue a warrant for the entry of non-domestic premises where it is necessary that the authorised officer has the option of entering by force.
- 1101 Consistently with Part 3 of the Protection of Freedoms Act 2012, entry to premises that are wholly or mainly domestic in nature is only available either by consent or with prior judicial approval. As such, paragraph 3 of this Schedule allows a justice of the peace to issue a warrant for entry to domestic premises if they consider that it is necessary for an authorised officer to enter to fulfil a relevant purpose and if i) entry has been or is likely to be refused, ii) the occupier or any other person able to grant entry cannot be found or iii) requesting entry may frustrate or seriously prejudice the reason for entry. This warrant may, or may not, confer power to enter by force.
- 1102 Entry under any of these powers can be made for a ‘relevant purpose’, which is defined in paragraph 7 of the Schedule as any relevant building function specified in the officer’s authorisation.
- 1103 When on non-domestic premises under these powers, the authorised officer can take samples (including from a suspect structure), measurements, and photographs to aid in their work – they can then take away those samples, e.g. for analysis. An authorised officer can also seize evidence of an offence under either the Building Act 1984 or this Bill where there is a risk the evidence will not be accessible in the future. In relation to domestic premises, the authorised officer may exercise these powers if that is permitted by the warrant, which will be the case only if the justice of the peace issuing the warrant considers it necessary.

#### **Background**

- 1104 The physical inspection of buildings during construction and occupation will be an important part of the new regime in order to ensure compliance. Paragraphs 1-3 of this Schedule enable officers to require entry to carry out their building functions. These paragraphs also provide powers for authorised officers to seize evidence while on the premises.
- 1105 As with many similar powers of entry, where expertise is required during the search beyond that which the officer possesses, they are able to take with them individuals with the necessary expertise, including police officers if the authorised officer anticipates they may be obstructed in the execution of the entry or search.
- 1106 These provisions are similar to those of other regulatory bodies, including existing provisions for

local authority building control officers under sections 95 and 96 of the Building Act 1984.

### Example 1

The Building Safety Regulator suspects that construction work on a site is not being done according to the approved plans and the Building Safety Regulator has not been informed of this change (as will be required in building regulations). The authorised officer is able to visit the construction site, with a relevant expert where necessary, to inspect the premises, confirm the change has been made and investigate whether this change complies with building regulations. The authorised officer will normally enter at a reasonable time.

### Example 2

The Building Safety Regulator has received intelligence that unregistered building control inspectors are carrying out building control work (i.e. are claiming to be registered building inspectors), but requires documents confirming this. An authorised officer is able to visit their office and secure documentation showing that such work is being done.

### Example 3

The Building Safety Regulator is notified of construction of a higher-risk building commencing without prior approval by the Building Safety Regulator (i.e. approval of a Gateway two application, as detailed in building regulations). The Building Safety Regulator can obtain a warrant from a justice of the peace, as it is likely their entry will be refused, and it may be necessary to use force to enter. An authorised officer, with this warrant, will be able to visit the site, entering using force if necessary, potentially with one or more police officers, and to confirm that work is taking place.

## Power to require information, documents etc

### Effect

- 1107 Paragraph 4 of this Schedule gives an authorised officer the power to require the provision of relevant information in connection with the Regulator's building functions. This will be specified as such by the authorised officer in writing. The information required can be in any form; if it is held electronically, the officer may require that it be made legible and accessible. The officer will have the power to take copies of the information or documents required for further investigation.
- 1108 In order to ensure that no one can be required to provide information that incriminates themselves, paragraph 4(6) provides that information obtained from a person under this power may be used against them only in a prosecution for the offences in clause 23 (providing false or misleading information to the regulator) and paragraph 6(1) of this Schedule (failing to provide information, documents etc when required to do so), perverting the course of justice or where that person makes a contradictory statement in evidence on their own behalf.
- 1109 Paragraph 4 also confers power on authorised officers to require facilities and assistance for a relevant purpose.

## **Background**

1110 This power will enable authorised officers of the Building Safety Regulator to gather information, whether from dutyholders such as Accountable Persons or their associates such as accountants or sub-contractors. The information required will be used by the Building Safety Regulator to ensure compliance and effectively satisfy the functions of the Building Safety Regulator.

1111 These provisions are similar to those of other regulatory bodies.

### **Example**

The Building Safety Regulator decides to conduct a review of the management of an occupied, higher-risk building. In order to prepare for a site visit to check the building's physical compliance with the requirements of the new regime, an authorised officer requests to see various documents including the latest building safety risk assessment. The documents are not provided. The authorised officer then issues a notice under paragraph 4 of Schedule 2, requiring the Accountable Person to submit these documents.

## **Offence of failing to provide information, documents etc**

### **Effect**

1112 Paragraph 6 of this Schedule is designed to ensure that the Building Safety Regulator and its authorised officers are provided with the information necessary to make accurate and appropriate decisions. In the absence of a reasonable excuse, failure to provide the required information, facilities or assistance will be a criminal offence for which the Building Safety Regulator will be able to bring proceedings. The maximum penalty will be an unlimited fine, along with up to two years' imprisonment in the Crown court or 12 months' imprisonment in a magistrates' court (six months until the commencement of paragraph 24(2) of Schedule 22 of the Sentencing Act 2020).

### **Background**

1113 This offence will be triable either way to deter non-compliance with the Building Safety Regulator and to reflect the gravity of the offence. The Building Safety Regulator requires relevant information to operate effectively and this must be complied with to fulfil that purpose.

### **Example**

The Building Safety Regulator decides to conduct a review of the management of an occupied, higher-risk building. In order to prepare for a site visit to check the building's physical compliance with the requirements of the new regime, an authorised officer requests to see various documents including the latest building safety risk assessment. The documents are not provided. The authorised officer then issues a notice under paragraph 4 of Schedule 2, requiring the Accountable Person to submit copies of the documents. The Accountable Person, not wishing to show the Building Safety Regulator that it has not been keeping up to date with its requirements, does not send anything to the Building Safety Regulator. In response, the Building Safety Regulator could carry out a search using its powers in paragraphs 1-2 of Schedule 2 to search for

the documentation, which could result in the issue of a compliance notice requiring the documentation to be updated by a set date. Alternatively, or in addition, for example where documentation has not been produced previously by that authorised person, the Building Safety Regulator could launch a prosecution for this offence.

## Other provisions

### **Effect**

1114 Paragraph 5 of this Schedule makes clear that any material seized under paragraph 1(5) or produced under paragraph 4 of the Schedule can be retained by the Building Safety Regulator for so long as is necessary.

1115 Paragraph 7 of this Schedule defines a number of terms used across Schedule 2, while paragraph 8 provides the normal exception from powers of seizure etc. of documents subject to legal professional privilege.

## **Schedule 3: Co-operation and information sharing**

1116 The explanatory note for this Schedule is provided in the note for clause 26.

## **Schedule 4: Transfer of approved inspectors' functions to registered building control approvers**

1117 The explanatory note for this Schedule is provided in the note for clause 42.

## **Schedule 5: Minor and consequential amendments in connection with Part 3**

1118 This Schedule contains amendments to the Building Act 1984 and other Acts, that are minor and consequential to measures in Part 3 of this Bill.

1119 Paragraphs are grouped together where it is convenient to do so because they have similar effects or are pursuant to the same clauses in the Bill.

Paragraphs 2, 3, 4(2), 5(2), 6, 9(2)-(5), 9(7), 11(2)-(3), 12(2), 13(2), 13(5)-(6), 14(2), 14(3)(b), 14(4)(b), 15(2)-(5)(a), 15(9), 16, 22(8), 38(2)(a), 47(2), 50, 53, 55(4)(a), 57(3)(a), 71, 78(2), 82(2), 82(9), 83(3)

1120 These paragraphs change references to the Secretary of State to 'appropriate national authority' and/or make amendments consequential to this, including where regulations are to be made either by the Houses of Parliament or Senedd Cymru, in recognition that these functions are performed by, or powers fall to, the Secretary of State in England and Welsh Ministers in Wales and legislative competence lies with the Houses of Parliament in England and Senedd Cymru in Wales.

1121 'Appropriate national authority' is defined as the Secretary of State in England and Welsh

Ministers in Wales in amended section 126 of the Building Act 1984. This is not a substantive change; instead, it reflects the true position in the Building Act 1984 since the transfer of Secretary of State functions to Welsh Ministers in a Transfer of Functions Order in 2009.

Paragraphs 4(3), 13(3), 21(2), 22(2), 23(2), 24(2), 25, 26(2), 27(2), 30(4), 32(2) and (6)(b), 33, 34, 35, 37, 40, 55(2), 55(4)(b), 55(5), 57(2), 61, 62, 63, 64, 65, 66, 68, 69, 70, 82(4), 83(2)

1122 These paragraphs do one of two things in recognition that functions previously performed by local authorities may now also be performed by the Building Safety Regulator:

- They change references in the Building Act 1984 from “local authority” to “building control authority” to recognise that functions previously undertaken by local authorities may now be undertaken by the Building Safety Regulator and that the term “building control authority” covers both, as set out in new section 121A of the Building Act 1984, inserted by clause 31; or
- They insert references to the Building Safety Regulator alongside local authorities where the relevant provision includes or relates to the wider roles of local authorities and the Building Safety Regulator under the Act rather than the narrower role of building control authority.

### Paragraph 5(3)

#### **Effect**

1123 This paragraph amends section 3 of the Building Act 1984 which deals with the exemption of prescribed classes of buildings, services, fittings or equipment from building regulations.

1124 The new section 3(2A) allows for the regulator in England to make a proposal to the Secretary of State for the giving, by the Secretary of State, of a direction to exempt a particular building or a particular class of building at a particular location. The new section 3(2B) requires the regulator to consult such persons as it considers appropriate before making a proposal. New section 3(2C) requires the Secretary of State to consult with the regulator, and any other person that the Secretary of State considers appropriate, before giving a direction, other than a direction proposed by the regulator. This mirrors the approach taken to regulations under the Building Act 1984 for England in new section 120B.

#### **Background**

1125 Under section 3(2) the Secretary of State may give a direction to exempt from all or any of the provisions of building regulations (as regards England) a particular building, or buildings of a particular class at a particular location, either unconditionally or subject to conditions. Under section 3(3) a person who contravenes or permits a direction given under subsection (2) to be contravened commits an offence and is liable to be fined.

#### **Example 1**

The regulator considers that the Secretary of State should give a direction under section 3(2) to exempt a particular class of buildings in England from specific building regulations’ requirements. The regulator considers it appropriate to consult with the Building Advisory Committee on this matter. After doing so,

the regulator makes the proposal to the Secretary of State for the direction to be given. The Secretary of State assesses the matter and decides to give the direction without needing to consult because the regulator has already consulted.

### Example 2

The Secretary of State, of his or her own accord, wishes to give a direction under section 3(2) exempting a particular class of buildings in England from specific building regulations' requirements. The Secretary of State consults with the regulator and also considers it appropriate to consult with the Building Advisory Committee and other relevant stakeholders. After consulting, the Secretary of State considers it appropriate to give the direction and proceeds to do so.

### Paragraphs 5(4), 14(7), 22(7) and 45(2)

1126 These paragraphs amend the penalties in section 3(3) of the Building Act 1984, which sets out the offence of contravening a direction by the Secretary of State in respect of exemptions from all or part of the building regulations: section 11(6) (breach of a direction by the Secretary of State dispensing with or relaxing a particular requirement of building regulations); section 20(7) (contravention of a condition imposed by a building control authority with respect to the use of a building or the proposed work on that building) and section 52(4) (failure to give a notice required under s52(3)).

1127 These paragraphs remove references to level 5 on the standard scale, as this has been abolished by section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and replaced with an unlimited fine. Paragraphs 5(4), 14(7) and 22(7) also increase the maximum daily fine for ongoing non-compliance from £50 to level 1 on the standard scale (currently £200), reflecting inflation since 1984.

### Paragraphs 7, 42(2)(b)

1128 These paragraphs delete the reference to "building regulations" in section 5(3)(b) and section 48(1)(b) of the Building Act 1984 in recognition that new section 35 covers both contraventions of building regulations and also requirements imposed under building regulations, as set out in clause 38. An example of a requirement imposed under building regulations could be a requirement imposed as part of a building control approval.

### Paragraphs 8, 38(3), 39, 49

1129 These paragraphs amend sections 5, 44, 45 and 58 of the Building Act 1984 consequential on new section 125A of the Act on the meaning of work (see paragraph 80).

### Paragraphs 9(6) and (8) and 10

#### **Effect**

1130 These paragraphs amend the existing powers in sections 6 and 7 of the Building Act 1984 which deal with the approval or withdrawal of approval of documents for purposes of building regulations.

1131 New section 6(5A) clarifies that transitional provisions can be included within notices approving Approved Documents, and the amendments to section 7 confirm which version of an Approved

Document will be relevant to any legal proceedings, where there has been a revision.

1132 Under section 6(8), the appropriate national authority may designate a body for the purposes of approving documents by way of making an order. New section 6(5B) states that a designated body must now obtain the consent of the appropriate national authority before approving a document or a revised document, or withdrawing an approval.

1133 New section 6(9) confirms that an order designating a body may specify that the designated body may only issue or approve documents which relate to buildings of a prescribed description, work of a prescribed description or prescribed provisions of building regulations.

### **Background**

1134 Approved Documents provide practical guidance on compliance with building regulations requirements. Currently there are Approved Documents to accompany each of the Parts of Schedule 1 to the Building Regulations (the functional requirements). No bodies are currently designated to approve documents.

1135 When changes are made to building regulations, a transitional period is usually provided to enable persons carrying out the work to become familiar with the new requirements.

1136 Section 7 provides that failure to follow guidance in an Approved Document can be relied upon as tending to establish liability if a contravention of building regulations' requirements is alleged and conversely proof of following guidance in Approved Documents can be taken as tending to establish negative liability.

#### **Example**

The Secretary of State decides to designate the Building Safety Regulator as the body to approve documents to give guidance on Part B (fire safety) for the purposes of the building regulations in England. The Secretary of State must make an order to this effect (which is a statutory instrument). If there were some revisions that needed to be made to the guidance on Part B, the Building Safety Regulator will first need to obtain the consent of the Secretary of State before it can approve this revised document.

The Secretary of State designates the Building Safety Regulator as the body to approve documents to give guidance on Part A (structure) for the purposes of the building regulations in England. The Secretary of State would like the Building Safety Regulator only to approve guidance about specific provisions detailed within Part A. The order made by the Secretary of State that designates the Building Safety Regulator to approve guidance about Part A may therefore explicitly state for instance that the Building Safety Regulator can approve documents in relation to A1 (loading) but not A2 (ground movement).

### **Paragraphs 11(4), 12(3) – (5), 13(4), and 18**

1137 Paragraph 11(4) inserts new section 8(3A) into the Building Act 1984 to enable the Building Safety Regulator to issue, on application, dispensations or relaxations from requirements of building regulations where it is the building control authority. Where the Building Safety Regulator is the building control authority applications for dispensations or relaxations can only be made to it. Paragraphs 12(3)-(5) and 13(4) make consequential amendments to sections 9 and 10 of the Building Act 1984, which set out procedural requirements relating to the making and

granting of applications for dispensations or relaxations. Paragraph 18 makes a consequential amendment to section 15 of the Building Act 1984.

### **Background**

1138 Section 8 of the Building Act 1984 currently enables the Secretary of State, on application by the person undertaking the work, to issue dispensations or relaxations of building regulations' requirements. It also allows building regulations to enable local authorities to exercise this power (which has been done through Regulation 11 of the Building Regulations 2010).

### **Paragraph 14(3)(a), 14(4)(a), 14(5), 14(6) and 14(8)**

#### **Effect**

1139 This paragraph amends the existing powers in section 11 of the Building Act 1984 which deal with the relaxation of building regulations.

1140 The amendments made by paragraph 14(3)(a) and (4)(a) allow for an application to be made for a direction to vary or revoke a direction under section 11(1) (at present an application can only be made for a direction under section 11(1)).

1141 Paragraph 14(5) inserts new subsections (3A) to (3C) into section 11. New subsection (3A) allows the regulator to make proposals to the Secretary of State for the giving of a direction under section 11.

1142 New subsection (3B) provides that before making proposals to the Secretary of State, the regulator must consult such persons as it considers appropriate. Where the regulator proposes a direction to vary or revoke a section 11(1) direction, and the section 11(1) direction was given on application, the regulator must also consult the original applicant.

1143 New subsection (3C) provides that where the Secretary of State proposes to give a direction of his or her own accord, he or she must first consult the regulator, the original applicant (where the proposal is to vary or revoke a section 11(1) direction and that direction was given on application) and such other persons as he or she considers appropriate.

1144 Paragraph 14(6) inserts new subsections (4) and (5). New subsection (4) makes provision for consultation by the Welsh Ministers before they issue a direction. New subsection (5) confirms that a direction by the appropriate national authority must be published.

1145 Paragraph 14(8) changes the reference in section 11 to plans being deposited to an application for building control approval being made as under new paragraphs 1A and 1B of Schedule 1 to the Building Act 1984, inserted by clause 32.

### **Background**

1146 Under section 11 the appropriate national authority may either on application or of its own accord, make a direction to dispense with or relax a requirement of building regulations as regards a particular type of building matter, if the requirement is deemed to be unreasonable.

#### **Example 1**

The regulator considers that the Secretary of State should give a direction to relax the application of specific building regulatory requirements to a particular building matter in England, as it would be unreasonable for them to apply. Before making the proposal, the regulator considers it appropriate to consult with the Building Advisory Committee. Having consulted, the regulator

proceeds to make the proposal. The Secretary of State considers the regulator's proposal to be appropriate and gives the direction.

### Example 2

The Secretary of State of his or her own accord wishes to give a direction to relax the application of specific building regulatory requirements to a particular building matter in England, as it would be unreasonable for them to apply. The Secretary of State first consults with the regulator and considers it appropriate to also consult with the Building Advisory Committee and external stakeholders. Having consulted on the matter, the Secretary of State considers it appropriate to give the direction and proceeds to do so.

### Example 3

The regulator wishes to make a proposal to the Secretary of State to revoke a direction relaxing the application of building regulatory requirements to a building matter in England. The direction was originally granted by the Secretary of State on application by an individual. The regulator consults with the original applicant and considers it appropriate to also consult with the Building Advisory Committee and external stakeholders. Having consulted, the regulator proceeds to make the proposal. The Secretary of State considers the proposal made by the regulator and decides to give the direction.

## Paragraph 15(5)(b), (6), (7), (8), (10)

### **Effect**

1147 This paragraph amends the existing powers in section 12 of the Building Act 1984 which deal with approving types of building matters.

1148 Paragraph 15(6) and (7) amends section 12 to allow for the appropriate national authority to revoke a certificate issued under section 12(3) on application (at present there is no option for a person to make an application for revocation of a certificate).

1149 Paragraph 15(8) inserts new subsections (8A)-(8D). New subsection (8A) allows the regulator to make proposals to the Secretary of State for approvals to be given, and for approval certificates to be varied or revoked under sections 12(6) and 12(8), in England.

1150 New subsection (8B) provides that before making a proposal to the Secretary of State, the regulator must consult with such persons as it considers appropriate. If the proposal is to vary or revoke a certificate issued on an application under subsection (1), the regulator must also consult with the original applicant.

1151 New subsection (8C) provides that before giving an approval or varying or revoking a certificate under this section, unless acting on a proposal of the regulator, the Secretary of State must consult with the regulator and any other person the Secretary of State considers appropriate. Before varying or revoking a certificate issued on an application under subsection (1), the Secretary of State must also consult with the original applicant.

1152 New subsection (8D) preserves the current consultation requirements for the Welsh Ministers.

1153 Paragraph 15(5)(b) makes a minor change consequential on the subsections described above.

1154 Paragraph 15(10) changes the reference in section 12 to plans being deposited to an application

for building control approval being made as under new paragraphs 1A and 1B of Schedule 1 to the Building Act 1984, inserted by clause 32.

### **Background**

1155 Under section 12 the appropriate national authority may approve a particular type of building matter as complying with requirements of the building regulations, either on application or of its own accord.

#### **Example 1**

The regulator decides to make a proposal to the Secretary of State for the approval of a particular building matter as being compliant with relevant building regulatory requirements in England. Before making proposals to the Secretary of State, the regulator considers it appropriate to consult with the Building Advisory Committee and external stakeholders. Having consulted, the regulator proceeds to make the proposal. The Secretary of State reviews the proposal and issues a certificate approving the matter.

#### **Example 2**

An individual makes an application to the Secretary of State to vary an approval certificate that was issued on application. The Secretary of State consults with the regulator and the original applicant and considers it appropriate to also consult with the Building Advisory Committee. Having consulted, the Secretary of State decides to vary the certificate and publishes a notice of the variation.

### **Paragraph 17**

#### **Effect**

1156 Clause 9 abolishes the Building Regulations Advisory Committee for England (BRAC) as established under section 14 of the Building Act 1984. This paragraph repeals subsections 14(1)-(4) which deal with the establishment of BRAC, payment of the committee's expenses and requirement for the Secretary of State to consult with BRAC and other bodies before making building regulations.

1157 Paragraphs (3) and (4) make minor amendments to the requirements for Welsh Ministers to consult the Building Regulations Advisory Committee for Wales (BRACW).

1158 Other requirements for consultation are set out in new sections 120B and 120C of the Building Act 1984 (see paragraph 77).

1159 This paragraph also inserts the heading 'Wales' above remaining subsections (5)-(8), which deal with the establishment of BRACW, and which are not being repealed.

#### **Paragraphs 19, 21(3)-(5), 22(3)-(6), 23(3)-(4), 24(3), 26(3)-(4), 27(3)-(5), 29, 32(4)(b)-(e), 32(6)(c), 41(2), 42(3)(a)-(c), 43(2), 44(a)-(c), 47(3), 55(3)**

1160 These paragraphs make amendments to the Building Act 1984 pursuant to the introduction of new paragraphs 1A and 1B into Schedule 1 of the Building Act 1984 under clause 32. New paragraphs 1A and 1B will be used to make building regulations to set out new requirements for applications, including applications for building control approval which will replace current arrangements for the deposit of plans of building work. These amendments replace references to

the deposit of plans with references to the making of applications for building control approval or make similar consequential amendments.

### Paragraphs 20, 28, 79

1161 These paragraphs repeal sections 16, 17, 31 and 124 of the Building Act 1984 pursuant to the introduction of new paragraphs 1A, 1B and 1C into Schedule 1 of the Building Act 1984 under clause 32. New paragraphs 1A and 1B contain powers for building regulations to set new requirements for applications, including applications for building control approval, which will replace current arrangements for the deposit of plans of building work, and for the approval of changes to the work covered by the original building control approval. New paragraph 1C provides powers for building regulations to make provision about the giving of certificates.

#### **Background**

1162 Section 16 of the Building Act 1984 makes provision for the deposit of plans of building work with local authorities. Section 17 makes provision with regard to the approval of persons to give certain certificates. Section 31 makes provision for departures from deposited plans. Section 124 defines deposit of plans in relation to section 16.

### Paragraph 30(2) – (3)

#### **Effect**

1163 This paragraph amends section 33 of the Building Act 1984 to specify that tests carried out, or required to be carried out, by building control authorities can be carried out not just in connection with the work, but also the building on which the work is to be carried out. Further, the paragraph inserts new subsection (3A) to specify that the tests may involve the cutting into or laying open of work or buildings, or the pulling down of work.

#### **Background**

1164 Section 33 makes provision to enable building control authorities to require persons undertaking work to carry out tests, or to carry out tests themselves of building work or conformity with building regulations' requirements.

### Paragraphs 31, 46 and 85

1165 Paragraph 31 repeals section 35A of the Building Act, which is no longer needed as the section 35 offence as substituted by clause 38 is triable either way and therefore not subject to the time limits on bringing prosecutions in summary-only offences, to which section 35A makes an exception.

1166 Paragraphs 46 and 85 consequentially repeal subsections (6) and (6A) of section 53 and paragraph 4(6) of Schedule 4 to the Building Act 1984.

### Paragraphs 32(3), (4)(a), (5), (6)(a)

1167 Paragraph 32(3) amends section 36 of the Building Act 1984 (which creates a power for building control authorities to require rectification of non-compliant work) to mirror the expansion of the offence in section 35 to cover requirements imposed under building regulations as well as building regulations themselves.

1168 Paragraph 32(4)(a) is a tidying-up amendment which reflects the correct legal position.

1169 Paragraph 32(5) ensures that the protection against enforcement in section 36(5) will not apply in respect of higher-risk building work. It also confirms that the protection only applies where the

work is done in accordance with agreed plans and requirements imposed by the building control authority, including requirements imposed under sections 19-25 of the Building Act 1984 (which are the only sections of the Act under which the building control authority can impose requirements upon granting building control approval).

1170 Paragraph 32(6)(a) is a minor amendment consequential on new sections 35B and 35C (compliance and stop notices).

1171 The paragraph also makes a number of changes to terminology to reflect new terminology which will be used elsewhere in the Act, e.g. replacing ‘deposit of plans’ with ‘application for building control approval’.

### Paragraphs 36 and 52

1172 These paragraphs clarify that the ability to appeal a decision of a magistrates’ court to a Crown Court covers decisions relating to provisions in regulations made under the Building Act 1984 as well as the Act itself.

### Paragraph 38(2)(b)

1173 This paragraph replaces a reference to paragraph 3 of Schedule 1, with a reference to paragraph 1A(2)(d), because paragraph 3 is being repealed and replaced by 1A(2)(d).

### Paragraphs 41(3) and 43(3)

1174 These paragraphs are consequential to new section 101A “Appeal: refusal to consider application etc on ground is higher-risk building work” which is inserted by paragraph 30 of Schedule 6. Further detail is provided in the explanatory note for that paragraph.

### Paragraph 42(2)(a)

1175 The amendment set out in paragraph 42(2)(a) in respect of section 48(1)(a) of the Building Act 1984 extends the existing protection from enforcement action where an initial notice is in force. That protection is extended from the issue of a notice requiring the removal or alteration of offending work under section 36 of the Building Act 1984 to include the new compliance and stop notices described in new sections 35B and 35C, inserted by clause 37. Protection against prosecution under section 35 remains as at present, in section 48(1)(b).

### Paragraphs 42(3)(d), 44(d)

1176 These paragraphs amend sections 48(2) and 51B of the Building Act 1984 to clarify the effect of the automatic lapse of an initial notice, or an amended initial notice, after three years if work has not commenced, pursuant to clause 35.

### Paragraph 45(3)

1177 Paragraph 45(3) amends section 52 of the Building Act 1984, consequential on the insertion of new section 52(5A) by clause 49(5).

### Paragraph 48(2)

1178 This paragraph amends section 57 of the Building Act 1984 to specify that the offence of giving a notice or certificate that purports to comply with certain requirements but is false or misleading covers notices or certificates given under building regulations, which have been designated for the purposes of section 57.

### Paragraph 48(3)

1179 This paragraph reflects the abolition of the statutory maximum for summary fines by section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

### Paragraph 51

1180 This paragraph amends section 78(7) of the Building Act 1984 on emergency measures for dangerous buildings to remove the reference to subsection (3) of section 106. This subsection concerns disputes in regard to compensation, and has been removed (see paragraph 67 below).

### Paragraph 54

1181 This is a minor amendment consequential on the changes to section 91 in clause 31 .

### Paragraphs 55(6) and 57(3)(b)

1182 These paragraphs are consequential to the insertion of new section 120A into the Building Act (see paragraph 77).

### Paragraph 56

1183 New section 91B sets out cooperation requirements for specified functions of fire and rescue authorities and local authorities in Wales, where exercise of those functions relates to a higher-risk building.

1184 New section 91B also creates information sharing gateways between local authorities and fire and rescue authorities in Wales for the listed functions, and a power for the Welsh Ministers to expand the list of functions in building regulations.

### Paragraphs 58 and 59

1185 These paragraphs amend the provisions in section 94 of the Building Act 1984 dealing with service of documents under that Act to modernise the provision, provide for service on an authorised officer of the regulator, and to make clear that electronic service of documents by email is acceptable when both parties have agreed to that.

### Paragraph 60

#### **Effect**

1186 This paragraph amends section 95 of the Building Act 1984 in line with paragraph 3 of Schedule 2 to this Bill, in that it requires a local authority building control officer to obtain a warrant from a justice of the peace before making entry without consent to premises that are wholly or mainly used as a private dwelling.

#### **Background**

1187 Chapter 1 of Part 3 of the Protection of Freedoms Act 2012, in particular the code of practice issued under section 47 of that Act, sets out the principle that entry to private premises for regulatory purposes should generally only be made where it has been authorised in advance by a justice of the peace, or the occupier consents. This provision, together with paragraph 3 of Schedule 2 to this Bill, provide for that in respect of the functions in the Building Act 1984 and this Bill.

### Paragraph 67

1188 This paragraph amends section 106 of the Building Act 1984 to remove the ability to go to a magistrates' court to have compensation determined where the compensation figure does not exceed £50.

## Paragraph 72

### **Effect**

1189 This paragraph amends section 112 of the Building Act 1984 in line with clause 22 of this Bill, in that it increases the maximum penalty for obstructing a local authority building control officer from level 1 (currently £200) to level 3 (currently £1000). It carves out authorised officers of the Building Safety Regulator from the obstruction offence, given the creation of the offence of obstructing an authorised officer in clause 22.

### **Background**

1190 This paragraph, along with clause 22, mirrors similar provisions supporting staff of other regulatory bodies such as the Food Standards Agency, Financial Conduct Authority and the Health and Safety Executive. The current penalty for obstructing a local authority building control officer is very low compared to these other regulators, and indeed the offence of obstructing an authorised officer of the regulator in clause 22, hence this provision increasing it accordingly.

## Paragraph 73

1191 This paragraph allows the Building Safety Regulator in England and Welsh Ministers and the Counsel General in Wales to prosecute offences under the Building Act 1984 in the same way as a local authority.

## Paragraph 74

1192 This paragraph amends section 119 of the Building Act 1984 to enable the Building Safety Regulator as well as the Secretary of State in England, and Welsh Ministers in Wales, to hold local inquiries on any matter where they make a determination or order, or give a consent or approval under the provisions of the Building Act 1984. Inquiries held using this power will be held in accordance with the provisions of section 250 of the Local Government Act 1972.

## Paragraphs 75, 76, 77, 84

### **Effect**

1193 Paragraph 77 inserts new sections 120A, 120B and 120C (as to which see below) into the Building Act. New section 120A sets out provision for regulations made under the Building Act which are not building regulations. These can be made by the appropriate national authority (the Secretary of State in England and Welsh Ministers in Wales) in most cases, although a few are England-only or Wales-only (see the explanatory notes for the clauses in question). Regulations to which this section applies are those made under sections 54A, 55, 56A, 56B, 90A, 91A, 92, 105B, 105C, 120D, 120I and 125A.

1194 Subsection (2) of new section 120A allows regulations to include incidental, transitional or savings provisions, and for those regulations to make different provision for different purposes or different areas. Subsection 3 mirrors provision in section 34 of the Building Act 1984 to confirm the various ways in which buildings can be categorised in regulations.

1195 Subsections (4) and (5) allows for regulations made under sections 54A and 90A to make consequential amendments to the Building Act.

- 1196 Subsections (7) and (8) set out the procedures for regulations applying to England in the Houses of Parliament. Regulations made pursuant to new sections 54A, 90A, 105C, 120D(2)(b), 120D(4)(c), 120D(6) or 125A will be made using the affirmative procedure. Other regulations will use the negative procedure.
- 1197 Subsections (9) and (10) set out the procedures for regulations applying to Wales in Senedd Cymru. Regulations made pursuant to new sections 54A, 120I or 125A will be made using the affirmative procedure. Other regulations will use the negative procedure.
- 1198 Paragraphs 75 and 76 make minor and consequential changes to section 120 of the Building Act 1984.
- 1199 New section 120B gives the Building Safety Regulator the ability to suggest proposals to the Secretary of State for the making of regulations under the Building Act, including building regulations, applying to England. It requires the Building Safety Regulator to consult with persons that it considers appropriate before making a proposal to the Secretary of State.
- 1200 It also requires the Secretary of State to consult with the Building Safety Regulator and any other persons that the Secretary of State believes are appropriate, before making regulations that have not been proposed by the Building Safety Regulator.
- 1201 This mirrors clause 7 which deals with regulations under Parts 2 and 4 of the Bill. As with that clause, it does not apply to regulations dealing with the scope of the higher-risk regime, as they have their own procedure (see new section 120E, inserted by clause 30).
- 1202 Paragraph 84 is a consequential amendment to Schedule 3 of the Building Act 1984.
- 1203 New section 120C sets out that, before making any regulations under this Act except building regulations (which are dealt with in section 14) or regulations under section 120I, Welsh Ministers must consult such persons as they consider appropriate. Before making regulations under section 120I, Welsh Ministers must consult the Building Regulations Advisory Committee for Wales, and any other person that the Welsh Ministers consider appropriate.

## **Background**

- 1204 Although most of the secondary legislation made under the Building Act will be building regulations, there will be some which will not because their subject matter does not fall within the scope of building regulations. These are regulations on public bodies and higher-risk building work (section 54A); establishment of registers (sections 55, 56A, 56B and 91A); appeals (section 55); the allocation of functions under Part 3 of the Building Act 1984 (section 90A); forms of notices or other documents (section 92); fees and charges because these may cover functions under the Act which do not relate to building regulations (section 105B); the imposition of a levy (section 105C); the meaning of higher-risk building in the Building Act (section 120D for England and section 120I for Wales); and the meaning of work in the Building Act 1984 (section 125A).
- 1205 New section 120B replaces sections 14(3) and (4) of the Building Act 1984 which previously set out requirements for consultation on proposals for building regulations in England.

### **Example**

The Building Safety Regulator considers that new building regulations relating to Part B (fire safety) are required and should be recommended to the Secretary of State. The Building Safety Regulator must first consult with persons that it considers appropriate, such as the public, on the regulations to be made. Once

the Building Safety Regulator has consulted with the relevant persons, it may then make a proposal to the Secretary of State on the building regulations to be made.

The Secretary of State wishes to make building regulations relating to Part A (structure), where proposals in relation to these regulations have not been put forward by the Building Safety Regulator. The Secretary of State must first consult with the Building Safety Regulator and any other persons that they believe are appropriate, such as the public and external stakeholders. Once the Secretary of State has consulted with the Building Safety Regulator and appropriate persons, they may then make the regulations.

### Paragraph 78(3)

1206 This paragraph amends section 121 of the Building Act 1984, consequential to new section 120D of the Building Act, inserted by clause 30, which defines a higher-risk building in England. Section 121 includes a broad definition of a building and paragraph 78(3) provides that this has no effect in relation to section 120D, to avoid any confusion between the definitions.

### Paragraph 80

#### **Effect**

1207 Paragraph 80 inserts a new section 125A into the Building Act. Section 125A(1) makes clear that where the term “work” is used in the Act, this encompasses a material change of use, other than for a few exceptions. This gloss on the term ‘work’ already appears in a number of places in the Act (see, for example, section 58(2)). Section 125A consolidates these existing glosses, which will be repealed as a consequence, and extends the gloss to a few additional and new provisions in the Act. New section 125A(1) provides powers to set out in building regulations exactly what is to be encompassed within a change of use; this replicates the existing power in paragraph 8(1)(e) of Schedule 1. The exceptions to the gloss, which are listed in new section 125A(3) cover provisions in the Act where it is clear that the term “work” is not intended to, or cannot, because of the context, include a change of use.

1208 New section 125A(2) provides reserve powers for regulations to prescribe other matters which might be covered by the term “work” in the provisions in subsection (3). This is because there may be circumstances where the Act and building regulations should apply but which may not fall within a common understanding of the term ‘work’, for example, because physical work may not be involved, such as change to energy status (see Regulation 22 of the Building Regulations 2010). These regulations will be subject to the affirmative procedure.

#### **Background**

1209 There are a number of references in the Building Act to work including a material change of use, as described above. The intention with new section 125A is to have a single provision covering this matter for the Act as a whole.

1210 Regulation 5 of the Building Regulations 2010 sets out the specific operations which are currently covered by the term “material change of use”.

### Paragraph 81

1211 This paragraph inserts new definitions into section 126 of the Building Act 1984 (“General interpretation”), and removes the definition of ‘relevant period’ consequential to the repeal of

section 16.

## Paragraphs 82(3), (5) – (8)

1212 This paragraph makes amendments to Schedule 1 of the Building Act 1984:

- consequential to the taking of new powers in clauses 32 and 56 (subparagraphs (3), (5) and (7));
- consequential to the definition of work in new section 125A (subparagraph (6)(a));
- to enable building regulations to set requirements related to the conservation of fuel and power for buildings of a prescribed description (subparagraphs (6)(b) and (c)); and
- to clarify that building regulations may include supplementary, incidental, transitional, transitory and saving provisions, and may make different provision for different purposes or areas, including different provision for higher-risk buildings and higher-risk building work (subparagraph (8)).

## Paragraphs 86, 87

### **Effect**

1213 These paragraphs amend the Parliamentary Commissioner Act 1967 and Freedom of Information Act 2000 to reflect the abolition of the Building Regulations Advisory Committee for England (BRAC).

### **Background**

1214 The establishment of the new Building Advisory Committee has resulted in the abolition of the Building Regulations Advisory Committee for England. In line with this, provisions within the Building Act 1984, Parliamentary Commissioner Act 1967 and Freedom of Information Act 2000 which make reference to BRAC are removed by these paragraphs.

1215 BRAC was subject to the Freedom of Information Act 2000 in its own right. This paragraph repeals the reference to BRAC in Part VI of Schedule 1 to the Freedom of Information Act 2000. BRAC was also subject to oversight from the Parliamentary Commissioner for Administration, under the Parliamentary Commissioner Act 1967. This paragraph repeals the reference to BRAC in Schedule 2 to that Act.

1216 As the Building Advisory Committee is part of the Health and Safety Executive, it will be subject to the Freedom of Information Act 2000 as part of the Health and Safety Executive rather than independently (the Health and Safety Executive appears in Part VI of Schedule 1 to the Freedom of Information Act 2000). The Building Advisory Committee will also be subject to the Parliamentary Commissioner Act 1967 as part of the Health and Safety Executive rather than independently (the Health and Safety Executive appears in Schedule 2 to the Parliamentary Commissioner Act 1967).

## Paragraph 88

1217 This paragraph repeals subsections (8) and (9) of section 3 of the Sustainable and Secure Buildings Act 2004 consequential to new section 125A of the Building Act.

## Paragraph 89

1218 This paragraph repeals article 45 of the Fire Safety Order and makes a consequential amendment to article 52(1).

### **Background**

1219 Article 45 of the Fire Safety Order requires local authorities to consult Fire Safety Order enforcing authorities before approving plans of building work deposited with them.

#### **Example**

New paragraph 1A of Schedule 1 to the Building Act, inserted by clause 32, provides powers for building regulations to prescribe arrangements for prescribed bodies such as Fire Safety Order enforcing authorities to be consulted by prescribed bodies such as building control authorities. The requirements of article 45 will be replaced by new building regulations which will set out required consultation arrangements between building control authorities and Fire Safety Order enforcing authorities.

## **Schedule 6: Appeals and other determinations**

1220 This Schedule contains amendments to the Building Act 1984 that relate to appeals and other determinations.

### **Effect**

1221 This Schedule largely transfers appeals and determinations in the Building Act 1984 in England from the Secretary of State to the Building Safety Regulator or First-tier Tribunal, and from the magistrates' court to the First-tier Tribunal.

1222 This is to align the appeals procedure for all building control decisions in England to sit with the Tribunal, and to accommodate the Building Safety Regulator's position as a new building control authority and oversight body for other building control bodies.

1223 The First-tier Tribunal has expertise in hearings on complicated land and property matters. The transfer of existing work, plus other appeal rights we are creating (for example, compliance and stop notices during design and build, and compliance notices in occupation) will enable it to develop expertise in building and building safety matters.

1224 Accordingly, following discussion with the Ministry of Justice and the Tribunal, we are amending the Building Act 1984 as follows.

1225 Paragraphs are grouped together where they have similar effects.

### **Effect in Wales**

1226 The Schedule will apply in Wales. Appeals against certain decisions by local authorities in Wales are to Welsh Ministers. References to Secretary of State now read as Welsh Ministers, and appeal references to magistrates' court remain.

Paragraph 2 – amendment of section 10(6)

1227 This paragraph sets out that copies of representations should be sent to the Building Safety Regulator where a local authority in England refuses an application for relaxation and an appeal is brought against that refusal. Copies of representations should continue to be sent to the Welsh

Ministers in Wales.

### Paragraph 3 – amendment of section 20

1228 This paragraph sets out that any appeal of local authority action in England under section 20 of the Building Act 1984 must now be lodged with the Building Safety Regulator in the first instance. The Building Safety Regulator will take one decision only; this will not go through an internal review. If the developer remains unhappy with the Building Safety Regulator’s decision, the further appeal will go to the First-tier Tribunal.

1229 Any appeal of the Building Safety Regulator’s action under this provision must be lodged with the First-tier Tribunal in the first instance.

1230 Appeals will continue to be to the Welsh Ministers in Wales.

### Paragraph 4 – amendment of section 39

1231 This paragraph sets out that any appeal of local authority action in England governed by section 39 of the Building Act 1984 must be lodged with the Building Safety Regulator in the first instance. The Building Safety Regulator will take one decision only; this will not go through an internal review. If the developer remains unhappy, the further appeal will go to the First-tier Tribunal.

1232 Any appeal of the Building Safety Regulator’s action under this provision must be lodged with the First-tier Tribunal in the first instance.

1233 Appeals will continue to be to the Welsh Ministers in Wales.

1234 Subsections (3) to (6) of section 39 are consequentially omitted.

### Paragraph 5 – amendment of section 42

1235 This paragraph amends section 42 in regard of appeals under section 20, 39 and 50 since the Secretary of State will no longer give a decision in these proceedings. It also removes references to section 16 (passing or rejection of plans), which is being repealed.

1236 The paragraph inserts a new subsection (A1) permitting appeals to the High Court on points of law in regard of Secretary of State decisions on relaxations of building regulations; this merely replicates the current position. The right of appeal is extended to applicants, local authorities, and registered building control approvers.

1237 Appeals will continue to be to the Welsh Ministers in Wales.

### Paragraphs 6 & 7 – amendment of section 43 and insertion of new s43A

1238 In these paragraphs, section 43 is omitted and a new section 43A is inserted. This relates to appeals under sections 20, 39 and 50 (use of materials, relaxations, and plans certificates).

1239 New s43A makes provision for the Building Safety Regulator or First-tier Tribunal, when determining an appeal under those sections, to give any directions it considers appropriate for giving effect to its ruling. It also confirms that where the Regulator determines an appeal in the first instance, that decision may be further appealed to the First-tier Tribunal.

### Paragraph 8 – amendment of section 50

1240 This section will allow an appeal to the Building Safety Regulator where a registered building control approver (formerly known as an Approved Inspector) has refused to give a plans certificate. This replaces the existing determination process.

1241 Appeals under new subsection (2) of section 50 in Wales will go to the Welsh Ministers.

### Paragraph 9 – transfer from magistrates’ court to the tribunal in England

1242 This paragraph transfers functions as above as listed in paragraph 9, Schedule 6.

### Paragraphs 10 – 28

1243 These paragraphs insert ‘or tribunal’ after ‘court’, ‘a court’, or ‘the court’, and make similar consequential amendments, to accommodate the redirection of appeals and other decisions to the First-tier Tribunal in England.

### Paragraph 29 - new section 105A, Enforcement of decisions of the First-tier and Upper Tribunal

1244 This is a new clause that enables enforcement of Tribunal decisions, such that any decision of the First-tier or Upper Tribunal under or in connection with the Building Act 1984, other than a decision ordering the payment of a sum (which is dealt with separately under the Tribunals, Courts and Enforcement Act 2007), is to be enforceable with the permission of a county court in the same way as orders of a county court.

1245 Please also see note for clause 117, which makes similar provision for decisions under or in connection with Part 4 of the Building Safety Bill.

### Paragraph 30 – new section 101A, Appeal: refusal to consider application etc on ground is higher-risk building work

1246 Under the new regulatory regime in England, the Building Safety Regulator will act as the building control authority for higher-risk buildings during construction, responsible for checking building work and verifying that it complies with regulations. Local authority building control, or registered building control approvers (formerly known as Approved Inspectors), will be the building control authority for buildings out of scope of the regime. In Wales, the local authority or designated local authority (under new s91ZD, in clause 31) will be the building control authority for higher-risk buildings.

1247 The definition of higher-risk buildings in England for the purposes of the Building Act 1984 is set out in clause 30, with further detail to be set out in secondary legislation. It will cover multi-occupied residential buildings, care homes and hospitals of 18 metres or more in height or at least seven storeys (whichever is reached first). Detailed guidance will be issued to help developers understand the scope of the regime, assess whether their building falls into the definition and therefore who the correct building control authority will be. New section 120I, in the same clause, confers power on the Welsh Ministers to define ‘higher-risk building’ for Wales.

1248 There may be cases where a developer submits their application for building control approval to local authority building control or where a developer submits an initial notice or amendment notice to their local authority when the development may be in scope of the new regulatory regime. The local authority has the power to refuse to consider the building control application (in England) or an initial notice / amendment notice (in both England and Wales) on the basis that they have determined that the building is in scope of the regulatory regime, and therefore that the Building Safety Regulator must be the building control authority (in England) or the local authority is the building control authority (in Wales). This clause provides for a person who intends to carry out the work to appeal the local authority’s decision that their building is in scope of the regime, to the Secretary of State (in England) or Welsh Ministers (in Wales), should they

think that their building is not in scope of the regime. The appeal process will be set out in secondary legislation made under this clause.

1249 The appellant can appeal to the High Court from the decision of the Secretary of State or Welsh Ministers on a point of law.

1250 Paragraphs 39(3) and 41(3) of Schedule 5 to the Bill are consequential to this provision and make amendments to the Building Act 1984 with regards to initial notices and amendment notices. The effect of these changes would be that in such cases where the developer and registered building control approver wrongly submits such a notice then the default deemed acceptance rules in section 47(3) and section 51A(5) of the Building Act do not apply.

### Example

The design, construction and refurbishment elements of the new regulatory regime will apply to ‘higher-risk buildings’, defined as multi-occupied residential buildings, care homes and hospitals of 18 metres or more in height or at least seven storeys (whichever is reached first).

A developer in England has received planning permission on a building one year prior to the introduction of the new regulatory regime. With their planning permission still valid and yet to start construction, the developer must figure out who the building control authority will be.

The developer considers whether their building is a ‘higher-risk building’. In this example, the developer has identified that the building has six storeys, which are all above ground level, and is 16m tall – one of the storeys is tall with a large mezzanine. The developer concludes that the building is therefore not in scope of the regime because they do not count the mezzanine as a seventh storey. The developer submits a building control application to local authority building control.

Upon considering the building control application, the local authority assesses that the floor area of the mezzanine level in the building is over 50 percent of the floor area of the largest storey of the building and therefore counts as another storey. The local authority refuses to consider the building control application on the basis that the building is seven storeys tall and therefore in scope of the new regime.

In this example, should the developer want to appeal this decision, they would submit an appeal to the Secretary of State. The person appointed by the Secretary of State to decide the appeal could decide whether the appeal will be considered via written representation or following a hearing. If, upon considering the appeal, the person appointed determines on behalf of the Secretary of State that the building is in scope of the regime, then that decision may be appealed to the High Court on a point of law only.

If it is determined on appeal that the building would if built be a ‘higher-risk building’ then the developer must submit their building control application to

the Building Safety Regulator before starting construction, or change their plans.

## Schedule 7: Building Safety Charges

### Effect

- 1251 This schedule will be inserted into the Landlord and Tenant Act 1985 as Schedule 2 of the Act, pursuant to the new section 30D of that Act, which is introduced by clause 119 of the Bill. It provides details of the new charge payable in higher-risk buildings.
- 1252 The 'building safety charge' is the charge payable by tenants to the landlord for the ongoing costs of the new regulatory regime. It will include only the costs arising from a defined set of building safety measures set out on the face of the Bill and does not include the cost of remedial works.
- 1253 The Accountable Person will incur 'building safety costs' in performance of their duties under Part 4 of the Bill or regulations made under Part 4. Where tenants have a lease for a fixed term of 7 years or more and have agreed under the terms of that lease to pay a service charge which varies according to the costs expended by the landlord on the upkeep of the building, the landlord will be able to pass building safety costs on to those tenants by way of the new building safety charge.
- 1254 This schedule provides a detailed outline of the operation of the building safety charge. It sets out the 'relevant building safety measures' involved, the obligations on the landlord, the basis of calculation and apportionment and a series of protections for tenants.
- 1255 The concept of a new 'building safety charge' is to facilitate transparency and accountability in relation to building safety measures and the associated costs. The charge will form part of a clear audit trail flowing from the statutory duties through the measures taken, the associated costs incurred, the apportionment of those costs, demands for payment of the building safety charge and the holding on trust of sums received. The schedule deals with all those matters. It also makes provisions which place limitations on the building safety charge, enable tenants to interrogate charges, voice opinions on proposed contracts and challenge the reasonableness of costs incurred.

### Details of the schedule

#### Building safety charges – Paragraph 1

- 1256 Paragraph 1 sets out what is meant by "building safety charge", "building safety costs", "building safety measures" and "relevant building safety measures". It explains that building safety costs are those incurred by the Accountable Person or Special Measures Manager, in respect of building safety measures. It specifies that costs will include such matters as the regulator's fees, legal and professional fees and management costs.
- 1257 Sub-paragraph 8 details the definitions of a 'relevant landlord' and 'relevant tenant' which applies to this schedule and are set out in clause 30D of the amended Landlord and Tenant Act 1985.

#### Relevant building safety measures – Paragraph 2

1258 Paragraph 2 (1) lists the specific building safety measures which can be costed into the building safety charge. The list includes (amongst other things), applying for a building assurance certificate, appointing a Building Safety Manager, preparing a building safety case etc. Sub – paragraph (2) includes a power for the Secretary of State to make regulations to amend, remove or modify the list of building safety measures.

### Building safety charges: landlord obligations – Paragraph 3

1259 Paragraph 3 sets out certain obligations the landlord must comply with when demanding the building safety charge.

1260 Sub-paragraph (1) provides that the landlord must calculate the building safety charge and give the tenant a demand in writing. It must specify the date by which the charge must be paid, which must be at least 28 days after the demand has been given to the tenant. The landlord must also give the tenant a summary of their rights and obligations in relation to building safety charges and comply with any further conditions that may be prescribed.

1261 Sub-paragraph (2) states that the Secretary of State may make regulations about the form and content of the summary of rights and obligations required.

1262 Sub-paragraph (3) provides the further prescribed conditions sub-paragraph may concern such matters as setting an accounting period, providing budgets and estimates, providing reconciliation accounts, the treatment of any surplus or shortfall, and the frequency with which demands can be made.

1263 Sub-paragraphs (4) – (7) gives a relevant tenant the right to withhold payment of a building safety charge if a landlord has not complied with their obligations under this paragraph and the regulations made thereunder. Under sub-paragraph (5), the tenant is required to notify the landlord in writing of the reasons why payment is being withheld. Subsection (7) states that where a tenant withholds payment in accordance with the paragraph, any provision of the lease relating to non-payment or late payment of any sums due under the lease do not have effect in relation to the withheld payment for the period during which the tenant is permitted to withhold payment.

### Calculation of building safety charge – Paragraph 4

1264 Paragraph 4 requires the landlord to apportion building safety costs between the tenants in the building. Where a lease sets out a method for apportionment of building safety costs this must be used (this provision will be relevant to leases entered into in the future. In relation to current leases: the landlord may use a method for apportionment of service charges that is provided for under the lease; the parties may agree upon a method of apportionment in writing/ and or either party may apply to the First-tier Tribunal for a reasonable and fair method of apportionment to be determined.

### Limitation of building safety charges: reasonableness – Paragraph 5

1265 Paragraph 5 provides that building safety costs are payable as a building safety charge by the tenant only to the extent that the costs are reasonably incurred by the landlord and only if the services provided are of a reasonable standard. If the costs incurred are not reasonable, the charge payable is limited to the amount that would be reasonable.

### Limitation of building safety charges: consultation requirements – Paragraph 6

1266 Paragraph 6 provides that in relation to a “qualifying building safety agreement”, the “relevant contribution” recoverable from a tenant as a building safety charge is limited to an “appropriate

amount” except in the circumstances set out in sub-paragraph (1). Those circumstances are:

- The consultation requirements have been complied with or those requirements have been dispensed with by the First-tier Tribunal.
- The agreement is entered into, whilst the building is in special measures.

1267 Sub-paragraph (2) describes the concept of a “relevant contribution” – the amount that a tenant will be due to contribute to building safety charges towards the cost of a qualifying agreement.

1268 Under sub-paragraph (3) – (5) the Secretary of State is given the power to make regulations specify what is “an appropriate amount”.

### Consultation requirements: supplementary – Paragraph 7

1269 Paragraph 7 deals with some of the detail in relation to consultation.

1270 Sub-paragraph (1), the Tribunal can dispense with the consultation requirements in any case if it is satisfied that it is reasonable to do so.

1271 Sub-paragraphs (2) set out that a “qualifying building safety agreement is one of a description that will be prescribed in regulations entered into by or on behalf of an Accountable Person or Special Measures Manager.

1272 Sub-paragraph (4) sets out that “consultation requirements” covering such matters as providing details of proposed agreements, obtaining estimates, inviting tenants to propose contractors, having regard to tenants’ observations, and giving reasons for decisions, will be prescribed in regulations.

### Limitation of building safety charges: excluded costs – Paragraph 8

1273 Paragraph 8 provides that certain costs cannot be recovered through the building safety charge. These include costs incurred because of enforcement action, costs incurred by reason of breach of contract, unlawful act or negligence or prescribed costs incurred or to be incurred by or on behalf of a relevant person in connection with the taking of relevant building safety measures.

### Limitation of building safety charges: time limit on making demands - Paragraph 9

1274 Paragraph 9 limits the amount of building safety costs that can be recovered as a building safety charge by excluding any costs incurred more than 18 months before the demand for payment is made. This rule does not apply if within 18 months of incurring the building safety costs the tenant is notified that the costs have been incurred and that the tenant will subsequently be required to contribute in respect of those costs.

### Limitation of building safety charges: costs of proceedings – Paragraph 10

1275 Paragraph 10 provides that in connection with proceedings before a Tribunal or a court under the Building Safety Bill, a tenant may make an application for an order that the costs (or part of the costs) incurred by the relevant landlord are not to be treated as building safety costs and cannot, therefore, be recovered through the building safety charge. The Tribunal may make such an order if it considers it just and equitable to do so in the circumstances of the case.

### Request for summary of building safety costs – Paragraph 11

1276 Paragraph 11 provides that a tenant (or the secretary of a recognised tenants’ association on a tenant’s behalf) can make a written request to the Accountable Person (or to any Special Measures

Manager) to supply them with a summary of the relevant building safety costs. The relevant building costs are those which have been taken into account in calculating a building safety charge.

1277 The time allowed for complying with the tenant's request depend on whether the accounts have already been made up when the request is received. If the accounts are made up, the summary is to be provided within 28 days. Where accounts have not been made up, the summary must cover the period of 12 months ending with the date of the request and must be provided within 6 months of that date (sub-paragraphs (1) and (5)).

1278 Sub-paragraphs (6) and (7) sets out the form the summary must take and the items to be summarised. Sub-paragraph (9) provides that if the building safety charges are payable by the relevant tenants of more than four premises, the summary must be certified by a qualified accountant.

### Request to inspect supporting accounts etc – Paragraph 12

1279 Paragraph 12 provides that where a tenant (or the secretary of a recognised tenants association) has obtained a summary of building safety costs, that person may request, in writing within six months of receiving the summary, reasonable facilities to inspect accounts, receipts, and other supporting documents and to take copies or extracts.

1280 Sub-paragraph (4) requires the Accountable Person (or Special Measures Manager, as the case may be) to make the reasonable facilities available for a two-month period beginning no later than one month after the request is made. Sub-paragraph (5) requires the relevant person to make the inspection facilities free of charge at the point of delivery, whilst copying facilities can be made subject to a reasonable charge.

### Failure to comply with request made under paragraphs 11 and 12 – Paragraph 13

1281 Paragraph 13 provides that where a request for a summary of costs or for an inspection of supporting documents, has not been complied with, the tenant (or the secretary) may apply to the First-tier Tribunal for an order requiring the Accountable Person (or the Special Measures Manager) to comply with the request.

1282 Sub-paragraph (3) provides that, before making an application, the tenant (or the secretary) must give at least 14 days' notice in writing to the Accountable Person (or the Special Measures Manager) of the intention to make an application and must give the building safety regulator and the landlord (where the Accountable Person is someone other than landlord) a copy of that notice.

### Liability to pay building safety charges: jurisdiction – Paragraph 14

1283 Paragraph 14 provides that an application can be made to the First-tier Tribunal for determination as to whether a building safety charge is payable and if so by whom; to whom it is payable; how much is payable, when it is payable and the manner it is payable. Such an application can be made regardless of whether the building safety charge has been paid by the tenant.

1284 Sub-paragraph (3) provides that an application can be made to the tribunal for determination as to whether costs that could be incurred in carrying out building safety measures are recoverable as a building safety charge and if so from whom, to whom, how much is payable and the manner it is payable.

1285 Sub-paragraph (4) specifies that the tenant is not to be taken to have agreed or admitted any

matter by reason of having made a payment. Sub-paragraph (5) specifies that an agreement by the relevant tenant is void in so far it purports to provide for a determination of any question in a particular manner or on particular evidence of any question which may be the subject of an application under sub-paragraphs (1) or (3).

### Building safety charge contributions to be held on trust – Paragraph 15

- 1286 Paragraph 15 applies to any building safety charges paid by a tenant to the relevant landlord. Sub-paragraph (2) states that any sums paid to the landlord by way of building safety charges and any investments representing those sums are to be held by the landlord either as a single trust fund or in two or more separate trust funds. Sub-paragraph (3) specifies that the landlord must hold any trust fund on trust to pay costs incurred in connection with the matters for which the building safety charges were payable and subject to that, on trust for the contributing tenants for the time being. Sub-paragraph (4) provides that the contributing tenants share in the residue of any funds proportionate to their respective liabilities to pay the building safety charge. Sub-paragraph (5) sets out that on the termination of a lease the tenant is not entitled to any part of the fund except where sub-paragraph (6) applies. Sub-paragraph (6) covers the dissolution of the trust fund and its use by the landlord.
- 1287 Sub-paragraph (9) provides the Secretary of State with regulation making powers to determine the use of any sums which may remain on credit in the fund, may instead be invested in any manner specified by regulations.

### Regulations – Paragraph 16

- 1288 Paragraph 16 provides for the meaning of “regulations” under this Schedule and the manner in which they are to be made.

### Interpretation – Paragraph 17

- 1289 Paragraph 17 gives the meaning of terms referred to in the Schedule.

## Schedule 8: The New Homes Ombudsman scheme

### Effect

- 1290 Schedule 8 sets the requirements of the New Homes Ombudsman scheme by outlining the provisions that the New Homes Ombudsman must include, and the forms of redress the New Homes Ombudsman scheme can specify. It also contains further provision about the New Homes Ombudsman scheme, for instance allowing the scheme to provide for different category of members.
- 1291 The scheme requirements must include matters such as the appointment of the New Homes Ombudsman, and how to become and remain a member. The process of becoming a member may include the payment of member fees and the provision of information, and a requirement for members of the scheme to have their own procedures for the handling and resolution of complaints (and a requirement to publish those procedures). The scheme may include different requirements for different categories of member, including as regards fees. If the scheme is maintained by the Secretary of State or by a person acting on their behalf, the fees may be calculated in relation to the cost incurred in operating the scheme as a whole. If the scheme is maintained by a third-party provider, fees may be set at a higher level to enable a profit to be

made by the scheme operator.

- 1292 The scheme must set out the matters about which complaints can be made, and the procedure for making complaints. The scheme may investigate complaints relating to non-compliance with a code of practice and must require the New Homes Ombudsman to have regard to any code of practice approved or issued under clause 132 when determining complaints. A fee must not be required to make a complaint against a member of the scheme. The procedure for making complaints may differ between categories of members, and may include the use of a scheme member's internal complaints handling procedure.
- 1293 The scheme must include provision about investigating and determining complaints. This must include provision requiring the New Homes Ombudsman to have regard to any code of practice when determining a complaint, a requirement of members to provide information, and for the New Homes Ombudsman to require members of the scheme to resolve complaints through one or more of the forms of redress listed in schedule 8.
- 1294 The scheme must include provision about how it will enforce determinations made by the New Homes Ombudsman, which may include provision for the expulsion of a member of the scheme, provided that in such instances also sets out the circumstances in which an expelled member may re-join the scheme.
- 1295 The scheme must allow for the New Homes Ombudsman to make recommendations, where widespread unacceptable standards of conduct or standards of quality of work are identified amongst members of the scheme, about changes that members may make in order to improve those standards.
- 1296 The scheme must include how it accepts and handles complaints transferred from a predecessor New Homes Ombudsman scheme where that predecessor scheme no longer exists.
- 1297 The scheme must also set out how complaints can be made against the New Homes Ombudsman scheme itself, how the scheme provides information to the Secretary of State, and how the New Homes Ombudsman scheme reports its activity.
- 1298 Where jurisdiction falls to more than one redress scheme, the scheme may include provision about working jointly with a person exercising functions under another redress scheme, including the making of joint determinations with another independent person under another redress scheme.

### **Background**

- 1299 These are new provisions.

#### **Example**

The New Homes Ombudsman scheme for England will be required to include details about the scheme in a number of areas so that it is clear what the scheme does and how it operates, and to ensure that the scheme is effective and can carry out the functions required. Any proposals to administer the New Homes Ombudsman scheme would be required, at the very least, to meet requirements set out under this schedule.

These requirements are intended to help consumers know how to access the scheme and how complaints will be handled, including when the New Homes

Ombudsman must have regard to a code of practice and what determinations the New Homes Ombudsman can make to resolve issues, such as the award of compensation. The scheme may enforce determinations through expulsion of members of the New Homes Ombudsman scheme, which provides an incentive to comply with determinations made by the New Homes Ombudsman.

The schedule sets out the requirement that the scheme must make provision as to how information is provided to the Secretary of State and the reports that it makes, which could be annual reports or case reports to highlight and recommend improvements. The scheme may be able to include further provision not set out in the schedule.

## Schedule 9: Construction products regulations

### Paragraph 1

#### **Effect**

1300 This power will be used to create regulations by the Secretary of State for the marketing and supply of construction products in the United Kingdom - the construction product regulations.

#### **Proposed use of power**

1301 This will be achieved in three ways: (a) for construction products on the market to be subject to a general safety requirement, (b) for designated products (products which perform to a designated standard), and products subject to a technical assessment (c) to create a list of safety critical products (where the failure of such products would result in death or serious injury). This is set out in more detail in the paragraphs below.

#### **Background**

1302 The existing regulatory framework does not cover all construction products that might present a safety risk. These regulations seek to correct this by extending the regulatory framework to all construction products.

### Paragraph 2 - General safety requirement

#### **Effect**

1303 The paragraph gives the Secretary of State the power to create regulations to ensure that construction products placed on the UK market are safe. The definition of safe is that a product under normal or reasonably foreseeable conditions of use does not present any risk to the health or safety of persons or, if it does, the risk is as low as it can be compatible with using the product. "Use" includes storage, transportation or packaging. Reasonably foreseeable conditions will include circumstances in which the product might come under stress, for example in a fire.

#### **Proposed use of power**

1304 The regulations will contain requirements dealing with the assessment of risk and taking steps to avoid that risk that can be imposed on persons carrying out activities in relation to construction products and their authorised representatives (as identified in regulations). The regulations will also contain market surveillance powers and powers to enforce where such products are not safe. The regulations will also allow for the regulation of the accuracy of claims about performance

made in advertising and marketing material.

### **Background**

1305 These will be new powers. Following the Grenfell Tower fire, it became apparent there was no general safety requirement applicable to construction products. Such products are not usually covered by consumer protection legislation.

#### **Example 1**

A manufacturer launches a new kind of brick tie onto the market. This product is not subject to a designated standard or to a technical assessment and has not been added to the safety critical list (but could be added). After a few months in use, when installed correctly, these brick ties begin to fail, bringing about the risk that walls incorporating these ties will collapse, injuring passers-by. The proposed regulations will require the manufacturer to ensure their products can be used safely by identifying the risks associated with the use of the product, and doing what can be done to mitigate this risk, including providing information about risks associated with using the product. If the product cannot be used safely, the product must be withdrawn from the market and, if possible, corrected before it is placed back on the market. The regulations will allow regulators to take action if the products are not removed from the market, and, potentially, bring a prosecution against relevant parties in the UK supply chain.

#### **Example 2**

If claims have been made through advertising, or in marketing material, about the performance of the ties which were misleading, then the regulations will allow regulators to take enforcement action against the relevant party, issue sanctions and potentially bring prosecutions. For example, if false statements are made about the mechanical performance of the new kind of brick tie which impacts its suitability for a particular intended use, the regulations would allow the relevant authorities to take action in relation to such a misleading performance claim, initially by requiring the misleading information to be corrected. This could go as far as requiring the product to be removed from the market until the misleading claims are rectified, with the potential for penalties up to, and including, fines or even imprisonment in certain circumstances.

### **Paragraphs 3 - 9 - Construction products with designated standards or technical assessments**

#### **Effect**

1306 These paragraphs allow the Secretary of State to impose standards of product performance and other specific requirements to be met by persons carrying out activities in relation to construction products (for example, manufacturers, their appointed representatives, importers and distributors of construction products) where products are subject to a designated standard or conform to a technical assessment.

1307 These powers can be exercised UK wide, but allow for different provision for different parts of

the UK. These paragraphs give the Secretary of State powers to set up a regime for ensuring that certain construction products once on the UK market must perform to designated standards, or conform to a technical assessment. This power will not be used for Northern Ireland, where construction products subject to an EU harmonised standard or conform to a European Technical Assessment will continue to be subject to EU Law. This provision will mean that reliable information is available to professionals, public authorities, and consumers on the performance of such construction products, that the performance of such products can be monitored, assessed and verified, and where appropriate products can be withdrawn from the market. These paragraphs also give the Secretary of State powers to impose requirements in relation to any statements or other claims made in advertising material in relation to the performance of products with designated standards or technical assessments.

### **Proposed use of this power**

- 1308 This power can be used to replace the existing EU based regime, and design it to meet the demands of the UK market. The type of requirements which can be imposed include, amongst other things, the requirement for a declaration of performance; the provision of information, including information about risk; a requirement for the monitoring, assessment and verification of product performance; the taking of corrective action; recording and investigating complaints; notification of risks to relevant authorities and co-operation with relevant authorities.
- 1309 The power will allow the imposition of requirements in relation to any statements or other claims made in advertising or marketing materials about the performance of products. This will bring misleading construction product performance claims into the construction products regulatory regime. The regulations will contain details of any prohibition against making false statements about performance.

### **Background**

- 1310 The current regulatory regime for construction products derives from EU law. This power will allow the Secretary of State to extend or amend that regime, or replace it.
- 1311 The Grenfell Tower Inquiry and internal and external investigations relating to construction product advertising have highlighted the severe consequences of misleading product performance claims. This power will also allow the Secretary of State to impose requirements in regulations on the making of claims or statements about the performance of construction products, including those made in advertising products, and for relevant authorities to investigate, enforce against and sanction non-compliance with such regulations.

#### **Example 1**

Products subject to a designated standard or a UK technical assessment are currently covered by existing EU harmonised standards, and in the future new designated standards and technical assessments can be added. This could happen where the EU creates new EU harmonised standards, and the Secretary of State chooses to designate them. The Secretary of State is also able to choose to designate other new standards, including UK and international standards. Going forward, there will now be flexibility to change this regime for the UK. The Secretary of State may want to revise the regulations for these products to reflect national wishes and concerns, and to ensure that it continues to meet the needs of the UK market.

## Example 2

A product subject to a designated standard is placed on the UK market. Marketing material, or advertising about the performance of the product is misleading. For example, claims are made that the product will comply with certain building regulations, but in fact it doesn't. The Secretary of State will be able to take powers in regulations which would allow the relevant authorities to take action in relation to such a misleading performance claim, initially by requiring the misleading information to be corrected. This could go as far as requiring the product to be removed from the market until the misleading claims are rectified, with the potential for penalties up to, and including, fines or even imprisonment in certain circumstances.

## Paragraphs 10 - 14 - Safety-critical products

### **Effect**

1312 These paragraphs give the Secretary of State the power to create a list of safety critical construction products, regulate those products by reference to safety critical standards, create a market surveillance regime and create powers of enforcement. These are products which, if they fail as part of a construction, could cause death or serious injury to a person. This list will not include products subject to a designated standard. Safety critical products will be identified with the assistance of industry and others as the Secretary of State considers appropriate. These products will be subject to equivalent regulation to products subject to a designated standard.

1313 The type of requirements which can be imposed include, amongst other things, the requirement for a declaration of performance; the provision of information, including information about risk; a requirement for the monitoring, assessment and verification of product performance; the taking of corrective action; recording and investigating complaints; notification of risks to relevant authorities and co-operation with relevant authorities.

1314 These paragraphs also give the Secretary of State powers to impose requirements in relation to any statements or other claims made in advertising material in relation to the performance of products included in the list of safety critical construction products.

### **Proposed use of power**

1315 To create the regulations as described above.

### **Background**

1316 This is a new provision.

1317 The consequences of the Grenfell Tower fire revealed there is gap in the regulation of construction products if they are not covered by an EU harmonised standard, or conform to a EU Technical Assessment (now a designated standard and UK Technical Assessment) or regulated as a consumer product. The purpose of this power is to remove this gap for products the Secretary of State identifies as safety critical, allowing such products that do not meet their claimed performance to be withdrawn from the market.

### Example 1

Should the Secretary of State consider (following consultation) a particular construction product, for example a type of fire door, should be included in the safety critical list, the Secretary of State will be able to commission the creation of a standard, against which the manufacturer must declare the product's performance, and to which standard the performance of products should consistently meet. This will mean any purchaser or user of this product will have reliable information about how it will perform, and the performance can be monitored and where necessary enforcement action taken.

### Example 2

A product is added to the safety critical list. Marketing material or advertising about the performance of the product is misleading. For example, claims are made that the product is energy efficient to a certain standard, but in fact it isn't. The Secretary of State will be able to take powers in regulations which would allow the relevant authorities to take action in relation to such a misleading performance claim, initially by requiring the misleading information to be corrected. This could go as far as requiring the product to be removed from the market until the misleading claims are rectified, with the potential for penalties up to, and including, fines or even imprisonment in certain circumstances.

## Paragraph 15 - Enforcement

### **Effect**

1318 These powers will allow the Secretary of State to create market surveillance and enforcement powers relating to the regulation of products subject to a designated standard, products which conform to a technical assessment, products on the safety critical list, and the requirement for products to be safe.

### **Proposed use of power**

1319 This power can be used by the Secretary of State to create an appropriate market surveillance and enforcement regime, to underpin the new regulatory regime created under the powers described above. These new powers can be exercised by relevant authorities (defined as the Secretary of State, or other Minister of the Crown, and a local authority, including Trading Standards). The intention is to, in effect, extend the existing powers under the Construction Products Regulations 2013 to the new regulatory regime, strengthening them to more closely align with the more extensive powers available for the enforcement of other product regulations through the Consumer Rights Act 2015, and extend the powers the Secretary of State has under the regime.

1320 The types of market surveillance and enforcement provisions which can be created include: monitoring and investigating compliance with construction product regulations. This can include a right to enter property and seize and retain products or evidence of non-compliance; a requirement for the provision of information; securing compliance with such regulations, and creating procedures for managing non-compliance, or suspected non-compliance. This can include, for example, a requirement to warn others of the risk, the marking of a product to indicate

such risk, the suspension for a specified period, or prohibition, of the marketing and supply of such a product, and forfeiture. It also extends to accepting undertakings (with sanctions for failure to comply). There is also provision for creating an appeals process. The intention is for the market surveillance and enforcement provisions created under this power, to be used also by relevant authorities to monitor, investigate and enforce against misleading claims about the performance of construction products.

### **Background**

1321 The Independent Review recommended that Government should ensure that there is a more effective enforcement regime with national oversight to cover construction product safety. The current regulatory framework sets out the enforcement and market surveillance powers of the Secretary of State and Trading Standards in relation to products where there is a designated standard or a United Kingdom Technical Assessment only. These regulations will allow us to create equivalent provisions for enforcement for products included on the safety critical list and those covered by the requirement to be safe. This means all construction products will be covered by an enforcement regime. The regulations can provide such powers can be exercised by relevant authorities (as defined).

#### **Example**

If, for example, it is a certain type of fire door produced by one manufacturer is found to be unsafe, it will not matter whether that particular type of fire door is subject to a designated standard, conforms to a technical assessment, or is on the safety critical list, the relevant authorities (as defined) will be given a full range of enforcement powers to ensure it is either made safe, or taken off the market.

If a claim is made in advertising or marketing material about the performance of fire doors, for example that they have a certain level of fire resistance, and that is not true, the relevant authorities will be given powers to, for example, require the advertising or marketing material is withdrawn, and/or that the product can no longer be supplied in the UK until the advertising or marketing material is corrected.

### **Paragraph 16 – Costs**

#### **Effect**

1322 This paragraph gives the Secretary of State power to make provision for a relevant authority (as defined) to impose charges on a person carrying out activities in relation to construction products or an authorised representative of that person. Provision under this power includes for the resolution of disputes and appeals process, and may confer a discretion on the relevant authority.

#### **Proposed use of power**

1323 This power will be used by the Secretary of State to create a charging regime which will allow for the recovery of some of the costs attributable to the operation of the regulatory regime. The regulations will set out in detail when a charge can be applied and to whom, how the charge will be calculated and how decisions about charging can be appealed.

### **Background**

1324 The Independent Review recommended that Government should ensure that there is a more effective enforcement, complaint investigation and market surveillance regime with national oversight to cover construction product safety. These powers enable the relevant authority (as defined), to recover some of the costs attributable to this new regime.

#### Example

This charging authority could be used, for example, to charge for attendance at conferences, for publications or providing advice and support. It could also be used, for example, if local Trading Standards discovers through the exercise of its market surveillance and enforcement functions that a construction product was found to be non-compliant with these regulations. It could seek to recover the costs of the relevant regulatory functions exercised in establishing and dealing with this non-compliance.

### Paragraphs 17 – 19 – Information

#### **Effect**

1325 This paragraph gives the Secretary of State power to provide in regulations for the provision of information by relevant authorities with other relevant authorities, or with persons specified, or identified in regulations. This may include circumstances in which information may, or must be, provided and includes a range of provision for how such provision of information can, or must be, managed. There is provision for the publication of information by relevant authorities. There is also provision for the creation of criminal offences.

#### **Proposed use of power**

1326 To create a regime for the effective provision of information to support the efficient regulation of construction products in the UK.

#### **Background**

1327 There are a number of bodies in the UK, including those with regulatory or enforcement functions, which may, in the exercise of their functions, obtain information about construction products which are, or may be, unsafe. This regime will create an information Gateway which will allow for this information to be shared lawfully with the appropriate relevant authority (and between such authorities where necessary) and which can then be used in the exercise of their regulatory functions. The regime will allow for the publication of information, which could assist anybody considering using such products. This regime is intended to support the effective exercise of the regulation of construction products in the UK.

#### Example

If, for example, a fire and rescue authority in England has information about the contribution to the spread of fire of a particular construction product, the fire and rescue authority will be able to share that information with the relevant regulator, who would then be in a position to investigate and take any appropriate enforcement action.

### Paragraphs 20 - 22 - General and supplementary

1328 Paragraph 20 provides that different provisions may be made for different purposes and for different parts of the United Kingdom. This is necessary in Northern Ireland for implementation of the effect of the Northern Ireland Protocol.

1329 Paragraph 20(1)(c) provides for transitional, transitory, consequential or supplementary provisions or savings.

1330 Paragraph 21 gives a power to repeal, amend or re-enact retained EU law, the 2019 and 2020 regulations, and any enactment, other than an Act.

1331 Paragraph 22 sets out details of the offences which can be created in construction product regulations, any relevant procedures applicable, and the type and range of sentences which can be imposed.

### Paragraph 23 - Procedure

1332 This paragraph provides that regulations under this Bill are to be made by statutory instrument. The regulations stipulate that the creation of the list of safety critical products and any criminal offences are subject to the affirmative procedure. Otherwise, they are subject to the negative procedure. Where regulations include provisions which are separately subject to the affirmative and negative procedure, then such regulations will be subject to the affirmative procedure.

### Paragraph 24 – Interpretation

1333 This paragraph explains what is meant by the key terms in this schedule.

## Commencement

1334 The provisions of this Bill come into force on such day as the Secretary of State may by regulations appoint, subject as follows.

1335 The following provisions of this Bill come into force on the day on which Royal Assent is received:

- Clause 1;
- Clause 2(1);
- Clause 7;
- Clause 27;
- Clause 29;
- Clause 58 to 67;
- Clause 123; and
- Part 6, except clauses 138 and 141
- The regulation making powers in Parts 2 and 4 of the Bill also come into force on Royal Assent.

1336 The following provisions come into force at the end of the period of two months beginning with

the day on which Royal Assent is received:

- Clause 126;
- Clause 133 (and schedule 9);
- Clause 135; and
- Clause 136.

## Financial implications of the Bill

1337 Financial implications of the Bill include, but are not limited to:

- The establishment and running of the national Building Safety Regulator within the Health and Safety Executive. The Government is already making available funding for Health and Safety Executive to deliver certain “shadow” Building Safety Regulator functions within the Secretary of State’s existing powers, with up to £16.4m made available in 2020/21 and increased funding in 2021/22. The Impact Assessment includes estimates for the future costs of the Building Safety Regulator;
- Dame Judith Hackitt’s Independent Review recommended that the regulator for buildings in scope of the more stringent regulatory model should operate a full cost-recovery model. The Government intends to implement the recommendation of the Independent Review around cost-recovery to the extent permitted under Managing Public Money principles. The Bill therefore makes provision for Building Safety Regulator to be able to charge substantial fees. Details of preliminary work undertaken to estimate achievable cost-recovery rates across each Building Safety Regulator function are set out in the Impact Assessment;
- The costs of delivery of the more stringent regulatory regime include costs for fire and rescue authorities and local authorities, given the powers in the Bill for these authorities to support the work of the regulator on higher-risk buildings through a “multi-disciplinary team” approach. The Bill makes provision for these local authority and fire and rescue authority costs to be met through reimbursement by the Building Safety Regulator (with Building Safety Regulator fees expected to cover the costs of the team delivering regulator’s functions), or grants by the Secretary of State. Grants may also be appropriate to build capability;
- The establishment and running of the National Regulator for Construction Products, covering the whole of the UK, within the Office of Products Safety and Standards (OPSS). The Government is already making available funding for OPSS to set up its construction products functions, including operating within the Secretary of State’s existing powers, and has allocated up to £10.3m in 2021/22. The Impact Assessment includes estimates for the future costs of the National Regulator for Construction Products;
- The Bill also enables the Secretary of State to make provision to apply charges on

manufacturers, importers and distributors in relation to regulatory and enforcement activity undertaken by the relevant authority for the regulation of construction products, where applicable. This will enable local Trading Standards and the national regulator to recover some of the costs of their associated regulatory activity, in line with regulatory good practice and to the extent permitted under Managing Public Money principles. Details of this are subject to further work between OPSS and MHCLG;

- There may be costs associated with the establishment and maintenance of the New Homes Ombudsman Scheme and enforcement framework. The Secretary of State must make arrangements for a scheme. Those arrangements may include the selection of a third party to establish the scheme and maintain it, establishing and maintaining the scheme directly or establishing the scheme and appointing another person to maintain the scheme. The New Homes Ombudsman will be funded by fees payable by its members. The Impact Assessment includes estimates for the future costs of the New Homes Ombudsman; and
- There may also be costs associated with the additional activities for Local Housing Authorities as dutyholders for their housing stock, insofar as it falls within scope of the Bill, and for the additional activities within the justice system, to support enforcement.

## Parliamentary approval for financial costs or for charges imposed

1338 A money resolution and ways and means resolution are required for the Bill. A money resolution is required where a Bill authorises new charges on the public revenue – broadly speaking, new expenditure – and a ways and means resolution is required where a Bill authorises new charges on the people – broadly speaking, new taxation or other similar charges. There is potential expenditure under various provisions of the Bill, particularly in relation to:

- Part 2 of the Bill, establishing the new Building Safety Regulator, responsible for implementation of the new, more stringent regulatory regime (for higher-risk buildings) with the support of local authorities and fire and rescue authorities; overseeing the safety and performance of all buildings, and promoting the competence and organisational capability of professionals, tradespeople and building control professionals working on all buildings. This will involve costs to Government, local authorities and Fire and Rescue Services, though the intention is that costs for the regime should be recovered from regulated parties so far as is possible.
- Clause 133, establishing a new national regulator for construction products, responsible for enforcing a stronger regulatory framework for construction products. The regulator will have access to a robust toolkit of powers to undertake market surveillance and enforcement, including removing products from the market that present safety risks, sanctioning businesses that break the rules, providing national

oversight of the regime and advice and support to the industry, as well as technical advice to the Government. This will all involve costs to Government, which will be recovered so far as is possible.

1339 There are new charges in relation to:

- clause 27, which provides for the Regulator to charge fees in connection with relevant functions in Parts 2 and 4 of this Bill;
- clause 56, which provides equivalent powers for the Regulator to charge fees in connection with relevant functions in the Building Act 1984;
- clause 57, which provides for the Secretary of State to impose a levy in relation to relevant applications for building control approval or specified descriptions of relevant applications for the purpose of meeting any building safety expenditure;
- Clause 127 and Schedule 8, which provide for the New Homes Ombudsman to charge fees;
- Clause 133 and Schedule 9, which provides for the new National Regulator of Construction Products to impose charges in respect of its construction product functions; and
- Authorisation for the payments of financial penalties imposed by courts in relation to the statutory obligations proposed in this Bill, including into the Consolidated Fund.

## Compatibility with the European Convention on Human Rights

1340 Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined in section 1 of the Act).

1341 In the opinion of the Secretary of State for Housing, Communities and Local Government, the Rt. Hon Robert Jenrick MP, the provisions of the Bill are compatible with the Convention rights and he has made a statement to that effect.

## Related documents

1342 The following documents are relevant to the Bill and can be read at the stated locations:

### Independent Reports

- Building a Safer Future - Independent Review of Building Regulations and Fire Safety: Final Report, May 2018. - [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/707785/Building\\_a\\_Safer\\_Future\\_-\\_web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707785/Building_a_Safer_Future_-_web.pdf)
- Grenfell tower inquiry: Phase 1 report -

<https://www.grenfelltowerinquiry.org.uk/phase-1-report>

### **Consultations and Consultation Responses**

- Building a Safer Future: Proposals for Reform of the Building Safety Regulatory System, June 2019. - <https://www.gov.uk/government/consultations/building-a-safer-future-proposals-for-reform-of-the-building-safety-regulatory-system>
- The Regulatory Reform (Fire Safety) Order 2005: call for evidence, June 2019. - <https://www.gov.uk/government/consultations/the-regulatory-reform-fire-safety-order-2005-call-for-evidence>
- Fire Safety – Government consultation, July 2020 - <https://www.gov.uk/government/consultations/fire-safety>

### **Relevant legislation**

- Architects Act 1997 - <https://www.legislation.gov.uk/ukpga/1997/22>;
- Building Act 1984 - <http://www.legislation.gov.uk/ukpga/1984/55>;
- The Building Regulations 2010 - <http://www.legislation.gov.uk/uksi/2010/2214>;
- The Building (Approved Inspectors etc.) Regulations 2010 - <https://www.legislation.gov.uk/uksi/2010/2215>;
- The Building (Local Authority Charges) Regulations 2010 - <https://www.legislation.gov.uk/uksi/2010/404>;
- Commonhold and Leasehold Reform Act 2002 - <https://www.legislation.gov.uk/ukpga/2002/15>;
- Construction (Design and Management) Regulations 2015 - <http://www.legislation.gov.uk/uksi/2015/51>;
- The Construction Products Regulations 2013 - <http://www.legislation.gov.uk/uksi/2013/1387>;
- The Construction Products (Amendment etc) (EU Exit) Regulations 2019 - <http://www.legislation.gov.uk/uksi/2019/465>;
- The Construction Products (Amendment etc) (EU Exit) Regulations 2020 - <https://www.legislation.gov.uk/uksi/2020/1359/made>;
- Defective Premises Act 1972 - <https://www.legislation.gov.uk/ukpga/1972/35>;
- Fire Safety Act 2021 - <https://www.legislation.gov.uk/ukpga/2021/24>;
- Health and Safety at Work etc. Act 1974 - <http://www.legislation.gov.uk/ukpga/1974/37>;

- Housing Act 1996 - <http://www.legislation.gov.uk/ukpga/1996/52>;
- Landlord and Tenant Act 1985 - <http://www.legislation.gov.uk/ukpga/1985/70>;
- Landlord and Tenant Act 1987 - <https://www.legislation.gov.uk/ukpga/1987/31>;
- Limitation Act 1980 - <https://www.legislation.gov.uk/ukpga/1980/58>;
- Regulation (EU) No 305/2011 - <https://www.legislation.gov.uk/eur/2011/305>;
- The Regulatory Reform (Fire Safety) Order 2005 - <https://www.legislation.gov.uk/uksi/2005/1541>;

## Annex A - Territorial extent and application in the United Kingdom

1343 The information provided in this Annex is the view of the UK government. The Bill forms part of the law of England and Wales only, with the exception of:

- Part 1 which contains an overview of the Bill and extends to the whole of the UK.
- Clause 2(2) and Schedule 1 which amend the Health and Safety at Work Act 1974 and extend to England and Wales and Scotland.
- Clauses 133 and Schedule 9 which relate to construction products and extend to the whole of the UK.
- Clauses 135 and 136 which amend the Architects Act 1997 and extend to the whole of the UK.
- Clause 139 which provides for a review of the regulatory regime, clause 140 which deals with financial provisions, clause 142 which deals with the Secretary of State's power to make consequential provision, and clauses 144 to 147 which contain general provisions, extend to the whole of the UK.

1344 The Bill applies<sup>2</sup> to England only, with the following exceptions:

- Clause 1 is an overview of the Act and signposts to provisions in relation to Wales, Scotland and Northern Ireland. Please see the section entitled "Minor and Consequential effects".
- The following parts and clauses apply to the whole of the UK: clause 133 and Schedule 9 which relate to construction products; clauses 135 and 135 which amend the Architects Act 1997, clause 139 which provides for a review of the regulatory regime, clause 140 which deals with financial provisions and clauses 142 and 144 to

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<sup>2</sup> For the purposes of Annex A only, this document does not list provisions that have minor or consequential effects in devolved territories as 'applying' to those territories because for the purposes of Standing Orders Nos. 83J to 83X such effects are to be disregarded. This means that the 'application' analysis here in Annex A differs slightly to the analysis in the main body of the explanatory notes, where a provision which has minor or consequential effects in a territory outside of England is said to 'apply' to that territory as it produces practical effects there. Those provisions with minor or consequential effects in devolved territories are described immediately below the table in Annex A.

147 which make general provisions in relation to regulations, commencement and extent, and the short title of the bill.

- Paragraph 8(2) of Schedule 1 applies to England, Wales and Scotland, and paragraph 8(4) of Schedule 1 applies to England and Wales. Clause 2(2) introduces Schedule 1 and therefore also has application outside England. Schedule 1 deals with amendments to the Health and Safety at Work etc. Act 1974.
- The Part 3 provisions and Schedules 4, 5 and 6, which amend the Building Act 1984, mostly also apply to Wales, and a very limited number of these provisions apply only to Wales. Please refer to the table below for a detailed list of these provisions.
- Clause 125 which amends the Defective Premises Act to allow for compensation where defective work in relation to a building has rendered a dwelling unfit for habitation applies in England and Wales.
- Clause 126 which deals with changes to the limitation periods for the causes of action in s38 Building Act 1984 and s1 Defective Premises Act 1972 applies in England and Wales.
- Clause 134 which amends the Regulatory Reform (Fire Safety) Order 2005 applies in England and Wales.
- Clause 143, which gives Welsh Ministers the power to make consequential provision, applies to Wales only.

1345 Of those clauses that apply to England only, the view of the UK government is that each of those clauses would be within the legislative competence of at least one of the devolved legislatures. Of those clauses that apply to England and Wales only, the view of the UK government is that each of those clauses would be within the legislative competence of at least one of the remaining devolved legislatures<sup>3</sup>.

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<sup>3</sup> References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru? Please see footnote below	Would corresponding provision be within the competence of the Scottish Parliament? Please see footnote below	Would corresponding provision be within the competence of the Northern Ireland Assembly? Please see footnote below	Legislative Consent Motion sought?
Part 1 (Clause 1) (Introduction)	Yes	In part	In part	In part	N/A	N/A	N/A	Yes (W) <sup>4</sup>
Part 2 (Clause 2) (The Building Safety Regulator)	Yes	In part	In part	No	N/A	N/A	N/A	No
Part 2 (clauses 3-20) (the Regulator, committees, staff etc; plans and reports)	Yes	No	No	No	Yes	Yes	Yes	No
Part 2 (Clauses 21-22) (Authorised officers)	Yes	No	No	No	Yes	Yes	Yes	No
Part 2 (Clauses 23-29) (providing false information to the regulator, reviews and appeals, supplementary and general)	Yes	No	No	No	Yes	Yes	Yes	No
Part 3 (Clauses 30-31) (Higher-risk buildings, building control authorities)	In part	In part	No	No	N/A	N/A	N/A	Yes (W)
Part 3 (Clauses 32) (Building regulations)	In part	In part	No	No	N/A	N/A	N/A	Yes (W)
Part 3 (Clauses 33-35) (Dutyholders, competence and lapse of approval etc)	Yes	Yes	No	No	Yes	Yes	Yes	Yes (W)
Part 3 (Clause 36) (Determinations)	In part	In part	No	No	N/A	N/A	N/A	Yes (W)
Part 3 (Clauses 37-39) (Enforcement)	Yes	Yes	No	No	Yes	Yes	Yes	Yes (W)
Part 3 (Clause 40) (Provision under ECA 1972)	Yes	In part	No	No	N/A	N/A	N/A	Yes (W)
Part 3 (Clauses 41-51) (Building control approvers and building inspectors)	Yes	Yes	No	No	Yes	Yes	Yes	Yes (W)
Part 3 (Clause 52) (Information)	Yes	No	No	No	Yes	Yes	Yes	No
Part 3 (Clause 53) (Functions under Part 3)	Yes	No	No	No	Yes	Yes	Yes	No
Part 3 (Clauses 54-56) (Miscellaneous and General)	Yes	Yes	No	No	Yes	Yes	Yes	Yes (W)
Part 3 (Clause 57) (Levy on applications for building control approval)	Yes	No	No	No	No	No	Yes	No
Part 4 (Clause 58) Overview of Part	Yes	No	No	No	Yes	Yes	Yes	No
Part 4 (Clauses 59-61) (Building Safety Risks)	Yes	No	No	No	Yes	Yes	Yes	No
Part 4 (Clauses 62-67) (Higher-risk buildings)	Yes	No	No	No	Yes	Yes	Yes	No
Part 4 (Clauses 68-71) (Accountable Persons and other key definitions)	Yes	No	No	No	Yes	Yes	Yes	No
Part 4 (Clauses 72-77) (Registration and certificates)	Yes	No	No	No	Yes	Yes	Yes	No

<sup>4</sup> Included in the LCM sought from Senedd Cymru as, were the Senedd to legislate in the other areas for which an LCM is sought, it could make a corresponding signposting provision.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru? Please see footnote below	Would corresponding provision be within the competence of the Scottish Parliament? Please see footnote below	Would corresponding provision be within the competence of the Northern Ireland Assembly? Please see footnote below	Legislative Consent Motion sought?
Part 4 (Clauses 78-82) (Building Safety Managers)	Yes	No	No	No	Yes	Yes	Yes	No
Part 4 (Clauses 83-86) (Duties relating to building safety risks)	Yes	No	No	No	Yes	Yes	Yes	No
Part 4 (Clause 87) (Mandatory reporting requirements)	Yes	No	No	No	No	Yes	Yes	No
Part 4 (Clauses 88-90) (Duties relating to information and documents)	Yes	No	No	No	Yes	Yes	Yes	No
Part 4 (Clauses 91-94) (Engagement with residents etc)	Yes	No	No	No	Yes	Yes	Yes	No
Part 4 (Clauses 95) (Residents and Owners' duties)	Yes	No	No	No	Yes	Yes	Yes	No
Part 4 (Clauses 96-97) (Contravention notices and Access to dwellings)	Yes	No	No	No	No	Yes	Yes	No
Part 4 (Clauses 98-101) (Enforcement)	Yes	No	No	No	Yes	Yes	Yes	No
Part 4 (Clauses 102-111) (Special measures)	Yes	No	No	No	Yes	Yes	Yes	No
Part 4 (Clauses 112-116) (Appeals etc)	Yes	No	No	No	Yes	Yes	Yes	No
Part 4 (Clauses 117-119) (Miscellaneous and general)	Yes	No	No	No	Yes	Yes	Yes	No
Part 4 (Clauses 120-122) (Landlord and Tenant)	Yes	No	No	No	Yes	Yes	Yes	No
Part 4 (Clause 123) Interpretation	Yes	No	No	No	Yes	Yes	Yes	No
Part 5 (Clause 124) Service charges and remediation works	Yes	No	No	No	Yes	Yes	Yes	No
Part 5 (Clause 125) Duties relating to work to dwellings	Yes	Yes	No	No	No	No	Yes	Yes (W)
Part 5 (Clause 126) Limitation Periods	Yes	Yes	No	No	No	Yes	Yes	No
Part 5 (Clauses 127-132) (New Homes Ombudsman scheme)	Yes	No	No	No	Yes	Yes	Yes	No
Part 5 (Clause 133) (Construction products)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 5 (Clause 134) (Fire Safety)	Yes	Yes	No	No	Yes	Yes	Yes	Yes (W)
Part 5 (Clauses 135-136) (Architects)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 5 (Clause 137) (Housing complaints)	Yes	No	No	No	Yes	Yes	Yes	No
Part 6 (Clause 138) (Liability of officers)	Yes	No	No	No	Yes	Yes	Yes	No
Part 6 (Clause 139) (Review of regulatory regime)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 6 (Clause 140) (Financial provisions)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 6 (Clause 141) (Crown application)	Yes	No	No	No	Yes	Yes	Yes	No
Part 6 (Clause 142) (Power of Secretary of State to make consequential provision)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (W)
Part 6 (Clause 143) (Power of Welsh Ministers to make consequential provision)	No	Yes	No	No	N/A	N/A	N/A	Yes (W)
Part 6 (Clause 144) (Regulations)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 6 (Clause 145) (Extent)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru? Please see footnote below	Would corresponding provision be within the competence of the Scottish Parliament? Please see footnote below	Would corresponding provision be within the competence of the Northern Ireland Assembly? Please see footnote below	Legislative Consent Motion sought?
Part 6 (Clause 146) (Commencement and Transitional Provision)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 6 (Clause 147) (Short title)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 1: Amendments of the Health and Safety at Work etc Act 1974	Yes	In part	In part	No	N/A	N/A	N/A	No
Schedule 2: Authorised officers: investigatory powers	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 3: Co-operation and information sharing	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 4: Transfer of approved inspectors' functions to registered building controllers	Yes	Yes	No	No	Yes	Yes	Yes	Yes (W)
Schedule 5: Minor and consequential amendments in connection with Part 3	In part	In part	No	No	N/A	N/A	N/A	Yes (W)
Schedule 6: Appeals and other determinations	In part	In part	No	No	N/A	N/A	N/A	Yes (W)
Schedule 7 – Building Safety Charges	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 8: The new homes ombudsmen scheme	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 9: Construction products regulations	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

*Footnote 1: Parts 2 to 4 give functions to the Health and Safety Executive. The HSE is a reserved body and the devolved legislatures cannot give it functions. This table sets out whether the devolved legislatures could make corresponding provision to give functions of the kind in Parts 2 to 4 of the Bill to a non-reserved regulatory body.*

## Minor or consequential effects<sup>5</sup>

1346 The following provisions that apply to England have effects outside England, all of which are, in the view of the Government of the United Kingdom, minor or consequential.

1347 Part 1, Clause 1 signposts to all provisions in the bill, including provisions which apply in

<sup>5</sup> References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business. For the purposes of Annex A only, this document does not list provisions that have minor or consequential effects in devolved territories as 'applying' to those territories because for the purposes of Standing Orders Nos. 83J to 83X such effects are to be disregarded. This means that the 'application' analysis here in Annex A differs slightly to the analysis in the main body of the explanatory notes, where a provision which has minor or consequential effects in a territory outside of England is said to 'apply' to that territory as it produces practical effects there. Those provisions with minor or consequential effects in devolved territories are described in this section of Annex A.

relation to England, Wales, Scotland and Northern Ireland (for example the provisions in Part 5 relating to Construction Products). Whilst it applies, in part, in all of the devolved territories, in that it signposts to the parts of the bill which apply in these territories, the effect is minor and the principal effect of this clause is in England as the majority of the bill applies in England only.

1348 Clause 52(3)(a)(i) and (c) contain consequential amendments to the Building Act 1984 so the existing local register provisions continue to apply only in Wales. Clause 52(3)(a)(ii) and (iii) and (b) contain consequential amendments which apply in England and Wales. These are all minor amendments which are consequential on clause 50.

### Schedule 1 as introduced by clause 2

1349 Parts of Schedule 1 apply to England and have, in our view, minor or consequential effects outside England. Paragraph 8(2) of Schedule 1 applies to England and Wales and Scotland, paragraph 8(4) to England and Wales, and paragraph 3 to England only. The remainder of Schedule 1 makes minor changes to the Health and Safety at Work etc. Act 1974 to confirm that aspects of that Act are not affected by the conferring of the building functions on the Health and Safety Executive. For example, paragraph 2 of Schedule 1 confirms that the provisions requiring the Health and Safety Executive to submit to the Secretary of State ‘particulars of what it proposes to do for the purpose of performing of its functions’ are not affected by the new building functions (as these are dealt with separately under the clauses relating to the strategic plan in Part 2 of the Bill). Similarly, paragraph 6 carves out the building functions from the powers relating to information gathering, because the Health and Safety Executive has bespoke information gathering powers for its building functions. These sorts of changes are small and clarificatory, and it is considered that their effects outside of England are minor or consequential.

### Clauses 21 and 22, and Schedule 2, and clauses 138 and 141 as they apply to those clauses and Schedule

1350 These provisions allow entry to premises (and create related powers such as search and seizure, requirements to provide information/facilities/assistance, with supporting criminal offences) in Wales for authorised officers of the regulator where necessary for the regulator to carry out its building functions – these functions relate to buildings in England only. Clauses 138 and 141 extend liability for offences to officers of bodies corporate, and bind the Crown. The power of entry in Wales may be used, for example, where a registered building control approver is suspected of committing an offence in England under the Building Act 1984, and it has an office in Wales where there is likely to be evidence relevant to the offence. It is considered that the effects of these provisions in Wales are minor or consequential.

### Subject matter and legislative competence of devolved legislatures

1351 Part 2 of the Bill (and its associated Schedules (1, 2, 3)) creates the objectives, general functions and powers, committees, enforcement powers, and planning and reporting requirements, of the Building Safety Regulator within the Health and Safety Executive. The Regulator will regulate buildings in England, in relation to the subject matters of design and construction of buildings and housing. The Health and Safety Executive itself exists in England, Wales and Scotland; it is reserved in Wales under paragraphs 155 and 156 (J6), and 197 (reserved authorities) of Schedule 7A to the Government of Wales Act 2006, and reserved in Scotland under paragraph H2 of Part 2, and paragraph 3 of Part 3 (reserved authorities) of Schedule 5 to the Scotland Act 1998. The devolved legislatures cannot give functions to the Health and Safety Executive. The areas in which the Regulator will regulate are housing and the design and construction of buildings which are devolved in all three devolution settlements and so the devolved legislatures could make

corresponding provision to confer equivalent regulatory powers on a different regulatory body.

1352 Housing is within the competence of the Scottish government because it is not a reserved matter in Schedule 5 of the Scotland Act 1998. Indeed, the Scottish Parliament has made legislation dealing with disrepair in private housing in the Housing (Scotland) Act 2006. Housing is within the competence of Senedd Cymru as it is not reserved matter at Schedule 7A of the Government of Wales Act 2006. The Senedd has passed the Housing (Wales) Act 2014 which regulates the private rented housing sector in Wales. Housing is also within the competence of the Northern Ireland Assembly. It is not listed as either an excepted or reserved matter at Schedules 2 and 3 of the Northern Ireland Act 1998. The Northern Ireland Assembly has, for example made the Private Tenancies (Northern Ireland) Order 2006.

1353 The design and construction of buildings is within the competence of the Scottish government because it is not a reserved matter in Schedule 5 of the Scotland Act 1998. The Scottish parliament passed the Building (Scotland) Act 2003 which gives the Scottish Ministers powers to make regulations with respect to the design and construction of buildings. The design and construction of buildings is within the competence of Senedd Cymru. It is a reserved matter under Schedule 7A to the Government of Wales Act 2006 (see paragraph 186) only in relation to specified Crown land and specified undertaker land, and not otherwise. It is also within the competence of the Northern Ireland Assembly as it is not listed as either an excepted or reserved matter at Schedules 2 and 3 of the Northern Ireland Act 1998. The Northern Ireland Assembly made the Building Regulations (Amendment) Act (Northern Ireland) 2009 which amended the Building Regulations (Northern Ireland) Order 1979.

1354 Part 3 of the Bill (including its associated Schedules (4, 5, 6) makes amendments to the Building Act 1984. Most clauses apply to both England and Wales, with some clauses making slightly different provision as between England and Wales. With the exception of clause 57 (Levy on applications for building control approval in respect of higher-risk buildings) the subject matter for Part 3 and its associated schedules is the design and construction of buildings, which is devolved in Scotland and Wales and transferred in Northern Ireland. The reason that the response to 'would corresponding provision be within the competence of Senedd Cymru is 'no' for Schedule 5 is that there are minor amendments to provisions which deal with design and construction of buildings in relation to Crown land and land falling within the 'specifier undertaker' exemption in paragraph 186 of Schedule 7A to the Government of Wales Act 2006, so the Senedd could not make corresponding provision in respect of those matters; the Senedd could make corresponding provision to the great majority of Schedule 5. Similarly, the reason that the response to 'would corresponding provision be within the competence of Senedd Cymru is 'no' for clause 33 is that it contains powers to make provision about admissibility of documents in evidence, which falls within the reservation in paragraph 9(1)(c) of Schedule 7A to the Government of Wales Act 2006, so the Senedd could not make corresponding provision in respect of those powers; the Senedd could make corresponding provision to the remainder of clause 33. The subject matter of clause 57 is taxation which is within the devolved competence of the Northern Ireland Assembly because it is neither excepted nor reserved by the Schedules to the Northern Ireland Act 1998.

1355 Part 4 of the Bill applies in England only and defines and imposes obligations on those with responsibility for the management/repair of higher-risk residential buildings within the scope of this regime and creates a regime for these obligations to be paid for and to be enforced by the Building Safety Regulator within the Health and Safety Executive. Schedule 7 makes provision about the building safety charge. These obligations relate to the subject matters of housing and fire safety which are devolved in all three devolution settlements.

- 1356 Housing is devolved in Scotland, Wales and Northern Ireland for the reasons given at paragraph 1352 above. For the purposes of the amendments to the FSO, fire safety is within the competence of the Scottish Parliament as it is not a reserved matter in Schedule 5 to the Scotland Act 1998. The Scottish Parliament has its own legislation in place in Part 3 of the Fire (Scotland) Act 2005. Fire safety is within the competence of Senedd Cymru as it is not a reserved matter at Schedule 7A to the Government of Wales Act 2006. Fire safety is also within the competence of the Northern Ireland Assembly as it is neither an excepted or reserved matter under schedules 2 and 3 to the Northern Ireland Act 1998.
- 1357 The subject matter of clause 89 is the admissibility of evidence in criminal proceedings and the subject matter of clauses 96 and 97 is the jurisdiction of the county court. Both subject matters are devolved in Scotland and Northern Ireland. In Scotland neither is a reserved matter in Schedule 5 to the Scotland Act 1998. In Northern Ireland neither are excepted or reserved matters under Schedules 2 and 3 to the Northern Ireland Act 1998.
- 1358 The subject matter of clause 125 is the safety of services provided to consumers. This is neither an excepted matter or a reserved matter in Schedules 2 and 3 respectively to the Northern Ireland Act 1998.
- 1359 The subject matter of clause 126 is limitation periods for civil actions, which is reserved under paragraph 8 of Schedule 7A to the Government of Wales Act 2006, but not reserved in Scotland or reserved or excepted in Northern Ireland.
- 1360 The subject matter of clauses 127-132 and Schedule 8 (the New Homes Ombudsman scheme) is housing, which is a devolved matter in Scotland, Wales and Northern Ireland for the reasons at paragraph 1352 above.
- 1361 The subject matter of clause 134 (amendments to the Regulatory Reform (Fire Safety) Order 2005) is fire safety, which is a devolved matter in Scotland, Wales and Northern Ireland for the reasons at paragraph 1356 above.
- 1362 The subject matter of clause 137 (housing complaints) is housing, which is a devolved matter in Scotland, Wales and Northern Ireland for the reasons at paragraph 1352 above.
- 1363 Clause 138 extends criminal liability for offences in Parts 2 and 4 to directors/managers etc of companies in certain circumstances. It is within the competence of the devolved legislatures for the same reason that the offences themselves are within competence.
- 1364 Clause 141 concerns Crown application of Parts 2, 4, the New Homes Ombudsman provisions at clause 127-132, and clause 138, all of which relate to the subject matter of housing. The Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly could make corresponding provision to apply legislation relating to housing to the Crown. Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that Acts of the Scottish Parliament bind the Crown unless otherwise stated; the Scottish Parliament has since passed the Housing (Scotland) Act 2014, which has the subject matter of housing, which does not mention the Crown and therefore, by virtue of s20 of the Interpretation and Legislative Reform (Scotland) Act 2010, binds the Crown. Senedd Cymru has made similar provision in s28 of the Legislation (Wales) Act 2019, and as mentioned above housing is devolved in Wales. The Northern Ireland Assembly could make corresponding provision as it is neither excepted nor reserved by the Schedules to the Northern Ireland Act 1998.

## Annex B – Glossary

Term	Notes
Accountable Person	The dutyholder during a building's occupation. Where there are two or more Accountable Persons for a building, one will become the Principal Accountable Person.
Approved Documents	Guidance detailing ways to meet building regulations. These contain guidance on the standard expected of materials and building work in order to comply with the building regulations and practical examples and solutions on how to achieve compliance for some of the more common building situations.
Approved Inspector	Old system name for a private sector building control body. Under this Bill they are now called a registered building control approver.
Building Advisory Committee	New expert advisory committee set up by the Building Safety Regulator to provide advice and information to the Building Safety Regulator in relation to its functions.
Building Assessment Certificate	A certificate that an Accountable Person must apply for and the Building Safety Regulator will provide if it is satisfied that the Accountable Person is meeting the relevant statutory obligations placed on them.
Building control	A statutory process of ensuring that building work complies with building regulations' requirements including by assessing plans for building work and building work on site.
Building control activities	Activities, such as site inspections, carried out by building control bodies to check that the requirements of the building regulations are met in relation to building work. The Bill creates a power to prescribe activities so that building control bodies have to use a registered building inspector to carry them out.
Building control authority	A generic name used for local authorities and the Building Safety Regulator in situations where either may be responsible for Building Act 1984 matters or checking compliance with Building Regulations requirements.
Building control body	A general term for organisations that check that the requirements of the building regulations are met in relation to building work. In the current system these are local authorities and Approved Inspectors. In the reformed system it will be local authorities, the Building Safety Regulator, and registered building control approvers.
Building control functions	Functions exercised by building control bodies at decision points in the building control process. Examples include the issuing of final or completion certificates. The Bill creates a power to prescribe functions so that building control bodies have to obtain and consider the advice of a registered building inspector before carrying them out.

Term	Notes
Building regulations	Technical and procedural requirements which persons undertaking building work must meet.
Building Regulations Advisory Committee (BRAC)	Advisory committee established under (current) section 14 Building Act 1984 for the purpose of advising the Secretary of State on the exercise of the Secretary of State's power to make building regulations, and on other subjects connected with building regulations. This committee is set to be abolished under section 9 of the Building Safety Act and be replaced by the Building Advisory Committee.
Building Safety Charge	The Building Safety Charge is the charge leaseholders will pay for the ongoing management costs of the new regime. The Accountable Person will incur these costs in performance their duties under Part 4 of the Bill. The charge is calculated for a building and apportioned to individual leaseholders. The Bill sets out limitations on what can be charged, as well as administrative requirements to ensure accountability of the Accountable Person and transparency of the costs.
Building Safety Manager	Appointed by the Accountable Person, the Building Safety Manager will support the Accountable Person in ensuring that the building is safely managed.
Building Safety Regulator	The Building Safety Regulator will be set up within the Health and Safety Executive, and make buildings safer through the implementation and enforcement of the new more stringent regulatory regime for buildings in scope, stronger oversight of the safety and performance of all buildings, and assisting and encouraging competence among the built environment industry, and registered building inspectors.
Building safety risks	A risk to the safety of persons in or about a building arising from the spread of fire, structural failure or any other matter prescribed in regulation.
Building work	Work on buildings to which building regulations apply, principally the construction and extension of buildings, material changes of use and material alterations.
Common parts	Those parts of higher-risk buildings (such as a block of flats) which are used by the residents of more than one flat (such as the corridors and fire-escape routes) and includes the structure and exterior of the building.
Committee on Industry Competence	New industry-led, expert committee set up by the Building Safety Regulator to facilitate improvement in the competence of the built environment sector.
Construction (Design and Management) Regulations 2015	The main set of regulations for managing the health, safety and welfare of construction projects.
Dutyholders	The key roles (whether fulfilled by individuals or organisations) that are assigned specific responsibilities at particular phases of the building life cycle.
Fire and rescue authorities	In England and Wales, fire and rescue authorities are independent

Term	Notes
(FRA)	local public bodies under the Fire and Rescue Services Act and also the enforcing authorities under the Regulatory Reform (Fire Safety) Order 2005. Different governance models apply: standalone (or combined) fire and rescue authorities, County Council or Unitary Authorities; mayoral authorities (London and Manchester); and, Police, Fire and Crime Commissioners. In Wales, a fire and rescue authority is a county council or a county borough council.
Fire and Rescue Service(s) (FRS)	The Fire and Rescue Service is the operational fire brigade, delivering all the functions associated with that role, and headed by a Chief Fire Officer. FRSs are overseen by FRAs and cover the identical geographical area to the FRA.
Fire risk assessment	The fire risk assessment is the process by which the Responsible Person must make a suitable and sufficient assessment of the presence of fire risks to relevant persons who are on or in the vicinity of premises regulated by the Regulatory Reform (Fire Safety) Order 2005, and must identify the general fire precautions needed to prevent or mitigate these risks in order to protect the safety of the relevant persons and comply with the legislation.
First-tier Tribunal	In England, the First-tier Tribunal (Property Chamber) is the specialist forum which determines a range of disputes in relation to property and land. These include questions relating to leasehold service charges, enfranchisement, park homes and land registration. The First-tier Tribunal is intended to be accessible to parties acting 'in person' i.e. without legal representation, and it does not generally award legal costs. Decisions made by the First-tier Tribunal (Property Chamber) can be appealed to the Upper Tribunal (Lands Chamber).
Gateway one, two and three	Three key stages in the building development for higher-risk buildings, where the dutyholder must comply with requirements before they can continue to the next stage of development.
Golden thread of information	Information required through other processes (such as Gateways two and three and the safety case) to support building safety held digitally to specific principles. These principles will include requirements around robust information management and keeping the information up to date. The golden thread will ensure that those responsible for the building have the required information to manage building safety during throughout the lifecycle of the building.
Higher-risk buildings	The technical term for buildings in scope of the new more stringent regulatory regime, as defined in the Bill.
The Housing Ombudsman	The Housing Ombudsman provides redress for social housing residents. The Ombudsman's scheme was approved by the Secretary of State under section 51 of, and Schedule 2 to, the Housing Act 1996. Membership of the scheme is compulsory for social landlords (primarily housing associations who are or have been registered with the social housing regulator) and local authority landlords.

Term	Notes
Mandatory Occurrence Reporting duties	The Mandatory Occurrence Reporting duties will require dutyholders across all stages of the existence of a higher-risk building to report fire and structural safety occurrences to the Building Safety Regulator which could pose a significant risk to life. Dutyholders will also be required to establish an internal framework for the monitoring of occurrences which might arise.
Multi-disciplinary team	Refers to a team which may be put in place by the Building Safety Regulator when it regulates higher-risk buildings. The team would include a fire safety expert, typically from the relevant Fire and Rescue Service, and a building control specialist, typically from the relevant local authority.
New Homes Ombudsman	An independent third party to provide alternative dispute resolution service between developers and purchasers of new build homes, and to remedy complaints.
Operational Standards Rules	Rules for local authorities and building control bodies setting out the performance requirements to be met in the exercise of their building control functions.
Principal Accountable Person	See above for the definition of an Accountable Person. When there are two or more Accountable Persons for a building, one will become the Principal Accountable Person.
Principal Contractor	Under the Construction (Design and Management) Regulations 2015 a Principal Contractor is a contractor appointed by the client to be in control of the construction phase of the project when there is more than one contractor working on the project. The Principal Designer can be an organisation or an individual.
Principal Designer	Under the Construction (Design and Management) Regulations 2015, a Principal Designer is a designer appointed by the client to be in control of the pre-construction phase of the project, when there is more than one contractor working on the project. The Principal Designer can be an organisation or an individual.
Refurbishment	A change made to a building which should be subject to consideration about how the change affects or might affect the safety of people in the building with respect to building safety risks.
Registered building control approver(s)	Formerly known as an Approved Inspector. Refers to private sector firms doing building control work.
Registered building inspector	Refers to individual inspectors that are registered by the Building Safety Regulator.
Resident	A “resident” of a residential unit is a person who resides there, regardless of tenure.
Residents’ Engagement Strategy	This is the means by which those living in buildings covered by the new regulatory regime can get more involved in decision-making in relation to the safety of their homes. It will set out the approach and the activities that the Accountable Person will undertake to deliver these opportunities for all residents to participate.
Residents’ panel	A statutory committee to be set up by the Building Safety Regulator. The residents’ panel will be made up of residents and

Term	Notes
	representatives/advocates of residents, and advise the Building Safety Regulator on strategy, policy, systems and guidance which will be of particular interest to residents of higher-risk buildings.
Responsible Person	<p>Under the Regulatory Reform (Fire Safety) Order 2005, a responsible person for a workplace is:</p> <ul style="list-style-type: none"> <li>• the employer if the workplace is to any extent under his control; or</li> <li>• in premises which are not a workplace, the person who has control of the premises (as occupier or otherwise) in connection with carrying on of a trade, business or other undertaking (whether for profit or not); or</li> <li>• the owner where the person in control of the premises does not have control in connection with the carrying out by that person of a trade, business or other undertaking.</li> </ul>
Safety Case Report	A structured argument, supported by a body of evidence that provides a compelling, comprehensible, evidenced and valid case, as to how the Accountable Person is proactively managing fire and structural risks in order to prevent a major incident and limit the consequences to people in and around the building.
Special Measures Manager	A court appointed manager who has been put in place by the Building Safety Regulator in circumstances where there has been a single serious or repeated breaches of the statutory obligations by the Accountable Person under the Building Safety Regime. The manager will manage the fire and structural safety of the building in accordance with measures as set out in an order made by the court, taking over the Accountable Person's functions under Part 4.

# **BUILDING SAFETY BILL**

## **EXPLANATORY NOTES**

These Explanatory Notes relate to the Building Safety Bill as introduced in the House of Commons on 5 July 2021 (Bill 139).

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