House of Commons Library

Research Briefing

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14 April 2022

Building Safety Bill: Lords amendments

Summary

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The response to the Grenfell Tower fire

In the wake of the Grenfell Tower fire in 2017, the Government established the Building Safety Programme and an Independent Review of Building Regulations and Fire Safety (the Hackitt Review).

The Hackitt Review identified a need for a new system of regulation for the design, construction and occupation of high-rise residential buildings. The Building Safety Bill takes forward the review's recommendations and other building related measures. It is the main legislative response to the fire.

At third reading in the House of Lords, the Minister of State for Building Safety and Fire, Lord Greenhalgh, said the Bill presented "the biggest changes to building safety in our history" and that it would protect leaseholders:

> The Bill not only addresses the total building safety regulatory system failure head-on but protects leaseholders who are the victims in a building safety crisis. This Bill helps to ensure that there is a more proportionate approach to building safety risk, introduces a cap on the historic building safety costs that leaseholders will have to pay and, finally, provides an extensive set of tools in law that will ensure that the polluter pays.

The Bill's progress

The Bill has completed its intial Commons and Lords stages. Amendments made in the House of Lords will be considered by the Commons on 20 April 2022.

The Bill page on parliament.uk has up-to-date information on progress of the Bill and amendments made. This includes the Bill as amended on report [HL Bill 144], which was the most up-to-date version of the Bill when this briefing was published.

This briefing covers Lord amendments in Grand Committee, on report and at third reading. A Library briefing on the Building Safety Bill was prepared for second reading and gives an overview of the Bill. A further briefing was drafted to provide updates on the Commons committee stage.

Key Lords amendments

The Bill was substantially amended by the House of Lords both in Grand Committee and on report. Peers expressed concern over the lack of an updated impact assessment to help them assess the costs and benefits of the revisions.

Building safety manager removed

Following concerns raised about building safety managers in relation to accountability, competence and costs to leaseholders, the Government amended the Bill to remove the legal requirement for a building safety manager. Instead, the Government said accountable persons should reflect on their current management arrangements, and that Government would continue to work with industry on improving best practice.

Building safety charge

As a consequence of the removal of the building safety manager provisions, the Bill was amended to remove the building safety charge as a separate charging mechanism. The cost of the new safety regime will still be recoverable from leaseholders, but will be accounted for and recovered via service charges.

Paying for remediation work

On 10 January 2022, the Secretary of State for Levelling Up, Housing and Communities, Michael Gove, announced a revised approach to dealing with building safety for residential buildings between 11 and 18 metres. Instead of a loan scheme, developers of these buildings are expected to meet the cost of cladding remediation work. In the absence of developers' agreement, the Government will use the levy on building control applications to raise the necessary funding.

On 13 April 2022, the Government said they had "agreed a solution with the housing industry that will see developers commit a minimum of £2 billion to fix their own buildings." There's an expectation that a further £3 billion will be raised through the Building Safety Levy over ten years.

In Grand Committee and on report, extensive Government amendments were agreed to which provide the legislative basis for securing contributions from developers and providing more protection for leaseholders in affected blocks.

During debates on the Bill, the Government's approach has been described as a "waterfall" or "cascade" of responsibility, each stage of which must be exhausted before responsibility passes on.

The Government amendments were welcomed, but peers questioned the degree to which they would deliver on Michael Gove's commitments of 10 January 2022. On report, non-Government amendments were agreed to:

- Extend cost protections to leaseholders living in affected blocks of **all heights.**
- Extend protections to leaseholders who have exercised the right of **collective enfranchisement**.
- Provide that leaseholders are **not liable** to pay for fire safety remediation work.

At third reading in the Lords, Lord Young of Cookham and others expressed the hope that these amendments would not be overturned in the House of Commons. Attention was also drawn to "unfinished business", including:

- responsibility for remediating "orphaned buildings" (where there is no developer and the freeholder and leaseholders cannot afford the work); and
- "the definition of a qualifying lease and its failure to protect those receiving a state pension who rely on rental income from a lease to sustain themselves."

1 Progress of the Bill

A draft Building Safety Bill was published in July 2020. The Housing, Communities and Local Government Select Committee scrutinised its contents and reported in November 2020. The Government response was published alongside the Building Safety Bill on 5 July 2020.

Second reading in the Commons took place on 21 July 2021. A Library briefing on the Building Safety Bill was prepared for second reading and gives an overview of the Bill.

The Bill's Commons committee stage took place over 16 sessions starting on 9 September and concluding on 26 October 2021. A further Library briefing was drafted to provide updates on the Commons committee stage. The Bill was reported on Wednesday 19 January 2022.

First reading in the House of Lords took place on 20 January 2022. The debate on second reading took place on 2 February. The Bill was debated in Grand Committee over four days on 21 February, 24 February, 28 February and 2 March 2022. Report stage took place on 29 March 2022 (in two parts: Part 1 and Part 2). The Bill's third reading took place on 4 April 2022.

Lords amendments will be considered in the Commons on 20 April 2022.

The Bill page on parliament.uk has up-to-date information on progress of the Bill and amendments made. There is also a series of factsheets on the various provisions (last updated on 5 April 2022).

This briefing covers Lord amendments in Grand Committee, on report and at third reading. It covers changes made to the Bill and other Government commitments.

2 Key Government amendments

2.1 The building safety regulator (Part 2, clauses 2-29)

Part 2 of the Bill would establish the building safety regulator within the Health and Safety Executive (HSE), as well as a Building Advisory Committee, committee on industry competence and residents' panel to advise the regulator.

Amendments 5 and 10 from Lord Stunell and Baroness Pinnock were both intended to require that any works on "higher risk" buildings fell under the scope of one building control authority.[1] Higher-risk buildings in the Bill includes buildings that are at least 18 metres in height or have at least 7 storeys and have at least two residential units. It also applies to care homes and hospitals meeting the same height threshold during design and construction.

Lord Stunell explained amendment 5:

> [amendment 5] seeks to achieve that for each building there can be only one regulatory authority and there is no circumstance where a higher-risk building has another regulator at work—another person supervising and signing off completions. There seem to me to be two situations in which, as I understand it, the Bill is not absolutely decisive on that point, as set out in Amendments 5 and 10.
>
> The first relates to a situation where comparatively minor works may be carried out in a higher-risk building which do not, of themselves, directly affect fire resilience. It would therefore seem quite possible for that application to be under the regulatory eye of somebody other than the building safety regulator. That might be a private regulator or a local authority building control body. [...].
>
> The second is that there are currently a number of trades and businesses which are self-certified: electrical works and heating works are self-certified, as are drainage and plumbing works, to a significant degree, and rewiring, internet and IT networks are in the same situation. Those self-certified cases, including, incidentally, replacing windows and so on, may result in the piercing of firewalls, the cutting through of cavity barriers or a loss of airtightness. Of course, a loss of airtightness means a loss of smoke-tightness, which can be vital in a fire situation.[2]

1 HL Deb 21 February 2022 c36GC

2 HL Deb 21 Feb 2022 c34GC

Baroness Pinnock added:

> In the Grenfell Tower inquiry, it became clear that the window replacement was not as satisfactory as one would hope and that the gaps between the window frames and structure of the building were filled with a flammable material. [...]
>
> That is just one example. Electrical safety is also critical. Self-certification is all very well, but having oversight, as the Hackitt report points to, helps to create clarity and accountability and to ensure that there is proper documentation.[3]

Baroness Scott of Bybrook, Baroness in Waiting, said: "the Government will not be able to accept these two amendments, but I assure your Lordships that their intention has already been met in the Bill". However, she added:

> The noble Lord, Lord Stunell, and the noble Baroness, Lady Pinnock, brought up very specific issues and situations. I will make sure that we write on those, because they are very specific and I do not have briefings on them, although I can say that minor works will still be covered by self and third-party certification [...] However, the BSR [building safety regulator] can inspect those works if it wishes to, so it will keep an eye on them and will use its powers to do that. On trade and business self-certification and on window replacements, which the noble Baroness, Lady Pinnock, mentioned, I will get a specific answer to noble Lords and put a copy in the Library.[4]

At the time of writing, the Government had not published a response to these points.

Disabled people and higher risk buildings

Concerns about safety and evacuation for disabled people were raised several times. Baroness Grey-Thompson highlighted that:

> Disabled people spend an enormous amount of time thinking about accessing and egressing accommodation. They have to take account whether there is a fire lift or whether the lift gets turned off in an emergency. They have to think about evacuation procedures, such as whether it is safer to remain in their flat or to leave; whether there is a refuge or place of safety—they are quite different things—and whether to choose to use an evac chair or an evacuation sledge. That is a difficult choice, as the latter means, for me, giving up my only means of mobility. It is not stepping out of a pair of shoes. [...]
>
> As reported by Disability Rights UK on 31 March 2021 on the evidence sessions:
>
> "Fifteen of the 37 disabled residents"—
>
> of Grenfell Tower—
>
> "died in the fire that killed 72 people".
>
> That means that 40% of the disabled people who lived in the tower died.

[3] HL Deb 21 Feb 2022 c35GC

[4] HL Deb 21 February 2022 c36GC

> So I ask the Minister: can he understand why disabled people are so angry, and is it not reasonable that a disabled person should have a plan and have at least a chance of getting out of a building in an emergency? When will Her Majesty's Government be releasing the outcome of the consultation on personal emergency evacuation plans, which closed on the 19 July last year? Finally, will the Minister offer his reassurance that he will do everything possible to protect disabled people through this Bill as, at the moment, there is little reference to them?[5]

At report stage, Lord Greenhalgh explained that the Government had "brought forward amendments to ensure that the building safety regulator will have to pay particular attention to the safety of disabled people in high-rise residential buildings and engage with them":

> Amendment 3 ensures that the building safety regulator must particularly focus on the safety of disabled persons when undertaking its broad Clause 4 functions around safety in higher-risk buildings. Amendments 5 and 6 are consequential amendments.
>
> Amendment 9 provides that the building safety regulator must take all reasonable steps to ensure that its residents panel contains representation from individual disabled residents of high-rise residential buildings or groups that represent or support disabled residents. Groups may be represented corporately or by an individual member expected to be sponsored by the organisation.
>
> Amendment 12 requires the building safety regulator to report publicly about its engagement with disabled residents of high-rise residential buildings in its wider annual statement on resident engagement. Amendment 14 defines "disabled", using the widely used definition from the Equality Act 2010.[6]

At report stage, the Government proposed amendment 3 to clause 4 on the regulator's duty to facilitate building safety for higher-risk buildings. Clause 4 subsection (1) stated:

> (1) The regulator must provide such assistance and encouragement to relevant persons as it considers appropriate with a view to facilitating their securing the safety of people in or about higher-risk buildings in relation to building safety risks as regards those buildings.

Amendment 3 proposed the following be added to clause 4(1):

> The assistance and encouragement that must be provided under subsection (1) includes, in particular, assistance and encouragement with a view to facilitating securing the safety of disabled people in or about higher-risk buildings in relation to building safety risks as regards those buildings."

Lord Greenhalgh added that amendments 5 and 6 were consequential amendments.[7]

5 HL Deb 2 February 2022 c957
6 HL Deb 29 March 2022 c1408
7 HL Deb 29 March 2022 c1408

Lord Greenhalgh returned to the safety of disabled and vulnerable people in high-rise blocks at third reading. He said the Government consultation on personal emergency evacuation plans (PEEPS) in July 2021 had highlighted "the substantial difficulties of mandating PEEPs in high-rise residential buildings" with reference to practicality, proportionality and safety.[8] He committed to a new consultation exercise and said:

> While our response is still being finalised, this will include a proposal called "emergency evacuation information-sharing" or EEIS. The Government will publish our response to the PEEPs consultation and our new consultation on EEIS and commence the Fire Safety Act 2021 on the same day next month, which is as soon as practical after the pre-election period. I have discussed this at some length with the noble Baronesses, Lady Grey-Thompson and Lady Brinton. I confirm to the noble Baroness, Lady Brinton, that the consultation will look to ensure as best we can that the golden thread exists between planning for the safe evacuation of a mobility-impaired person when needed and the response of fire and rescue services in the event that a building needs to be evacuated.[9]

2.2 Building control and regulation (Part 3, clauses 30-59)

The Building Act 1984 (along with the Building Regulations 2010) is the basis for the current system of building regulation in England and Wales. Part 3 of the Building Safety Bill amends the Building Act 1984 to make a series of changes to building control and regulation.

The Government proposed amendments 17, 18, 19, 20, 22, 27 and 29. Lord Greenhalgh said they were technical amendments "to create an information sharing gateway between the regulatory authorities of the building control profession in England and Wales" and would make changes to Clause 41 and Schedule 5 of the Bill.

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. According to the Explanatory Notes, 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. Schedule 5 contains minor and consequential amendments in connection with Part 3.

Lord Greenhalgh explained the purpose of these Government amendments:

> Some registered building control approvers and building inspectors will operate in both England and Wales. These amendments will ensure that, if the

8 HL Deb 4 April 2022 c1845

9 HL Deb 4 April 2022 c1845

> regulatory authority in one nation identifies that a cross-border registered building control approver or building inspector has breached professional conduct or operational standards rules, it can share this information with the regulatory authority of the other nation, if appropriate. The regulatory authority of the other nation may then wish to take investigatory action to discern whether similar breaches are taking place by the same registered building control approver or building inspector in their jurisdiction. These amendments will therefore ensure that regulatory bodies can share information with one another to effectively regulate the building control profession.[10]

Baroness Scott added:

> government Amendments 17 to 19, [...] make changes to Clauses 41 and 47 and introduce a new clause relating to approved inspectors. Amendments 18 and 19 relate specifically to approved inspectors' insurance, while Amendment 17 introduces a power for the regulatory authority to inspect local authorities and registered building control approvers. The Building Act 1984 currently requires approved inspectors to hold insurance through a government-approved scheme. These amendments remove this requirement. Instead, approved inspectors will need to identify adequate cover themselves, encouraging competition between insurance providers.[11]

These amendments were agreed.[12]

The Government also proposed further technical amendments 23 and 26. A series of technical amendments were proposed to Schedule 5 (amendments 25, 27, 28, 29 and 30). These amendments were agreed.[13]

Levy on applications for building control approval, etc (clause 57)

On 10 January 2022, Michael Gove, Secretary of State for Levelling Up, Housing and Communities, announced new measures aimed at protecting leaseholders from remediation costs in medium to high-risk buildings (those between 11 to 18 metres).[14]

He explained that Government amendments would allow a levy to be imposed on all residential building work going through the building control process, not just those over 18 metres or seven storeys, and said:

> This will enable the Government to raise funds to remediate cladding should the industry fail to step up and pay for the problems it has caused. It is our intention to set out in secondary legislation the levy rates and the details of

10 HL Deb 22 February 2022 c126GC
11 HL Deb 29 March 2022 c1462
12 HL Deb 22 February 2022 c153GC
13 HL Deb 22 February 2022 c154GC and c193GC
14 Department for Levelling Up, Housing and Communities (DLUHC), Government forces developers to fix cladding crisis, 10 January 2022

> who the levy applies to. By then negotiations with industry should have been concluded.[15]

Government amendments were agreed in Grand Committee.[16] Peers raised the following questions and issues:

- Would the levy be ring-fenced for a purpose connected with remediation and its administration?[17]
- What will it cost to set up and administer?[18]
- It risks being indiscriminate and may not focus on those who are culpable.[19]
- With no upper limit on the levy, it could be vulnerable to judicial review.[20]
- Would it apply to "bodies corporate" including "a holding company or special purpose vehicle"?[21]
- The risk of developers passing on the levy so it's reflected in the cost of new housing and the potential impact on social housing providers.[22]
- Will it raise sufficient funding and will it be watertight if subjected to challenge?[23]
- When will the funding be available and what will happen in the meantime? There was a suggestion the Government should provide bridging finance to ensure the work is not further delayed.[24]

Responding, Lord Greenhalgh conceded there may be an adverse impact on housing supply and said he made no distinction between social and private housing.[25]

Further Government amendments were moved and agreed on report to clarify the relationship between building industry schemes (clauses 125-126) and other measures in the Bill. Lord Greenhalgh said the amendments would:

> ...link membership of a scheme with the powers to impose different rates of the building safety levy, to block prescribed developers commencing development for which planning permission has been granted and to block prescribed developers being able to obtain building control approval on developments.

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15 HL Deb 24 February 2022 c167GC
16 HL Deb 24 February 2022 c195GC
17 HL Deb 24 February 2022 c174GC
18 HL Deb 24 February 2022 c174GC
19 HL Deb 24 February 2022 c174GC
20 HL Deb 24 February 2022 c176GC
21 HL Deb 24 February 2022 c176GC
22 HL Deb 24 February 2022 c180GC and HL Deb 24 February 2022 c181GC
23 HL Deb 24 February 2022 c185GC
24 HL Deb 24 February 2022 c191GC
25 HL Deb 24 February 2022 c188GC

> An entity which is eligible to be a member of a scheme but elects not to join it by making the necessary commitments to be a member may be subject to these measures. We have also specified that any regulations laid for these powers are to be affirmative, requiring parliamentary approval for the design of any schemes.[26]

On 13 April 2022, DLUHC announced agreement with industry such that developers will contribute a minimum of £2 billion to fix their own buildings with up to £3 billion to be raised from the levy over ten years

He expressed the hope "that using these powers will not be necessary" but said they would be used "if the industry fails to do the right thing to make buildings safe".[27]

The Minister also said the Government was considering an exemption from the levy "for affordable housing as a whole, including social housing, housing for rent or sale at least 20% below market rent or sales rates, and shared ownership."[28] There was recognition that applying a levy to affordable housing provision could disincentivise supply.

There is a Building Safety Levy: factsheet, last updated by the Government on 23 March 2022.

Application to the Crown and parliamentary estate (added to Bill)

The Government proposed amendments 21, 25, 30, 41, 42, 61, 138 and 146, to include Crown and parliamentary buildings within the Bill's scope. Amendments 41 and 42 would introduce new clauses to Part 3 of the Bill (the application of the Building Act and building regulations).

Lord Greenhalgh said the eight amendments would do three things:

> First, they extend the application of the Building Act and building regulations to work on Crown buildings and by Crown bodies. The Government believe that the ownership of a building should not determine whether the new building safety regime, or building regulations requirements, should apply. There should be a consistent approach in how building safety legislation operates across the whole life cycle of a building.
>
> Parts 2 and 4 of the Building Safety Bill apply to the Crown by virtue of Clause 137. The arrangements during the design and construction stages are being implemented by way of changes to the Building Act and, in due course, through building regulations. To apply the requirements for gateways and the golden thread to Crown buildings, the Building Act and the building regulations will need to be applied to work on Crown buildings. This new clause does that.
>
> There is an uncommenced provision in Section 44 of the Building Act which would allow the substantive requirements of building regulations to be applied to the Crown. The drafting of that section has limitations, however, so we consider it better to start afresh by repealing and replacing Section 44. There

[26] HL Deb 29 March 2022 c1467
[27] HL Deb 29 March 2022 c1467
[28] HL Deb 29 March 2022 c1483

> are also some necessary exclusions to reflect that the Crown cannot be subject to criminal sanctions.
>
> Secondly, the amendments make provision about the application of the Building Act and building regulations to work on the Palace of Westminster and other buildings on the Parliamentary Estate. At Second Reading, the right reverend Prelate the Bishop of Winchester asked in his valedictory speech that the building regulations should apply to the restoration of the Palace of Westminster. This change to the Building Act will ensure that happens.
>
> Finally, this new clause provides that if, in future, a building on the Parliamentary Estate came within scope of Part 4 of the Bill, that part would apply, subject to equivalent exclusions to those which affect how the Building Act and building regulations are being applied to the Crown and Parliament. These new sections of the Building Act and the Bill therefore ensure a consistent approach to building safety for Crown and parliamentary buildings.[29]

The amendments were agreed.[30]

2.3 Higher risk buildings (Part 4, clauses 60-114)

Building safety managers (removed on report)

The Bill proposed a new role of the Building Safety Manager for a relevant building. The Hackitt Report on building regulations and fire safety identified a need for a nominated building safety manager as part of the new system of building regulation. The Building Safety Manager's role would be to assist the Accountable Person in managing safety and overseeing the systems and processes in place to ensure a building's safety.

In Grand Committee, Baroness Fox of Buxley proposed clauses 80-84 on the appointment of building safety managers be removed from the Bill on the basis that "these clauses create an unnecessary duplicate role that will—guess what?—yet once more, financially cripple leaseholders". She added the Government had previously estimated that "the cost of a building safety manager will be £60,000 a year per block".[31] The Baroness continued:

> The key question is why building safety managers are needed at all, when the vast majority of leasehold developments have managing agents in place and leaseholders have to pay a management fee for their services. Surely splitting the function would risk disputes between property managers and building safety managers about what is and is not a safety issue and who is in control when remediation works have a safety element.
>
> [...] These are compulsory jobs but they are not mandated to a minimum standard. Qualifications for the role have not been established, no training

29 HL Deb 24 February 2022 c128GC
30 HL Deb 24 February 2022 c196GC
31 HL Deb 28 February 2022 c203GC

> programmes are in place and, as I say, even the professionals themselves do not seem to know what that training would consist of.[32]

Baroness Neville-Rolfe asked how the building safety manager would operate in practice and how often they would be expected to visit buildings. She asked:

> ...what is the vision of what this person is going to do, and will they be doing it once every five years, once a day, or whatever? That will affect both the cost and the risk that there will not be enough people to do the important job of ensuring that we have safe buildings. Even in high-rise buildings, there will still be quite a bit of demand.[33]

Baroness Pinnock highlighted that accountability was unclear:

> residents in higher-risk blocks will have a managing agent, to whom they pay a fee—a service charge—who appoints an accountable person, for whom there will be an additional cost, and possibly a principal accountable person, if that is necessary. On top of that, each block will have to have a building safety manager.
>
> [...] each block might have three people who potentially have conflicting roles—building safety risks will fall between the three. I can find nothing in the Bill that says how each will be accountable.[34]

Responding for the Government, Baroness Scott of Bybrook explained that "the creation of the building safety manager role was recommended by Dame Judith Hackitt in the independent review to ensure [...] that the day-to-day management of buildings is undertaken by suitably competent people".[35]

In response to concerns over accountability, she said building safety managers would "hold responsibility for certain tasks" set out in contracts:

> Clause 80 establishes the role and creates a duty for principal accountable persons to appoint a building safety manager and provide them with support and assistance to manage building safety risks, except where they have the capability to meet the duties without needing such support. So there will be times when principal accountable persons have the time and the competences to do it without appointing somebody else. The skills, knowledge and experience offered by building safety managers will help drive up safety standards and, we believe, deliver positive outcomes for residents. While the building safety manager will hold responsibility for certain tasks, to be agreed in their contract, accountability for meeting the duties set out by the Bill cannot be transferred by accountable persons to the building safety manager or anybody else.[36]

In response to concerns about competence, she said a framework on standards was being established:

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32 HL Deb 28 February 2022 c204GC
33 HL Deb 28 February 2022 c207GC
34 HL Deb 28 February 2022 c205GC
35 HL Deb 28 February 2022 c208GC
36 HL Deb 28 February 2022 c208GC

> Whether the building safety manager is an organisation or an individual, they must possess the necessary competence to deliver the role. If an organisation is appointed, it must have a nominated individual named and in place to oversee delivery, providing reassurance to residents that their safety is being maintained. The noble Baroness, Lady Pinnock, brought up the competence issue. Work is ongoing with the British Standards Institute to establish a competency framework for the role, which will be supported by further guidance.[37]

On the cost to leaseholders, Baroness Scott explained it "depends on the building". She added "some of these managers will be able to do multiple buildings if it is felt, by their accountable person, that they will be able to do a good job on that".[38]

The relevant clauses remained in the Bill during Grand Committee.

However, on report, the Government amended the Bill to remove the requirement for a building safety manager. Lord Greenhalgh said that "following feedback from leaseholders and persuasive interventions from noble Lords during Committee, we are scrapping the legal requirement to appoint a building safety manager". He explained the rationale:

> The Government are clear that accountable persons are responsible for ensuring that their buildings are safe and must not pass on unnecessary costs to leaseholders. We must restore common sense on building safety. There are more effective ways of discharging the responsibilities set out in the Bill than recruiting managers on high salaries for individual buildings.
>
> Accountable persons should reflect on their current management arrangements. If they are confident that they deliver safe outcomes, there is no reason for change. We are committed to driving up standards of safety management and maintenance in high-rise buildings and the competence of those who deliver it. In the first instance, this should be done by supporting the development and upskilling of those already managing buildings. The Government will continue to work towards raising professionalism and standards among property agents and are considering the recommendations of the working group of the noble Lord, Lord Best, on regulating the market. We will continue to work with industry on improving best practice.[39]

Clauses 82, 83, 85 and 86 on building safety managers were removed from the Bill. Consequential amendments were also agreed.[40]

Building safety charges (no longer a separate charge)

The Government was proposing to imply additional covenants into 'relevant leases' of higher-risk buildings which would have placed a requirement on tenants (long leaseholders) to pay a variable service charge for the upkeep of the building.

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37 HL Deb 28 February 2022 c208GC
38 HL Deb 28 February 2022 c208GC
39 HL Deb 29 March 2022 c1407
40 HL Deb 29 March 2022 cc1493-7

The covenants would have allowed landlords to pass on the cost of running/managing the new safety regime to tenants, including the cost of the building safety manager. These costs would have been included in a new building safety charge.

Throughout the Bill's progress, MPs and Peers questioned the need for an additional and separate charge for building safety as recovery is already possible via variable service charges.

On report, Lord Greenhalgh moved amendment 100 to "simplify how the costs are managed by removing the building safety charge as a separate charging mechanism".[41] He explained the Government's decision:

> I have listened to the feedback that we have received from stakeholders and in the other place and I thank my noble friend Lord Young of Cookham for raising this matter during Committee on the Bill. I recognise the concerns raised—that the building safety charge as previously envisaged could have created additional bureaucracy for landlords and leaseholders alike—and I have listened to those concerns.[42]

The charges will still be recoverable:

> We will do this by changing the modifications that we are making to the Landlord and Tenant Act 1985. Building safety costs will now be accounted for as part of the service charge, as my noble friend recommended. The costs will be clearly identifiable and part of a system that is familiar to both landlords and leaseholders, thereby ensuring transparency of the costs.[43]

If a resident management company appoints a professional director to support them in discharging their building safety duties under Part 4 of the Bill,[44] the cost of the appointment will be recoverable via the service charge.[45] Secondary legislation will specify leaseholder consultation requirements "to protect leaseholders from paying unnecessarily large sums as a result of appointing a professional director and ensure that, where professional directors are appointed, they can also be easily removed when required."[46]

41 HL Deb 29 March 2022 c1407

42 HL Deb 29 March 2022 c1407

43 HL Deb 29 March 2022 c1407

44 On report, the Government accepted Lord Best's technical amendment 86 to Government amendment 85 to achieve this.

45 HL Deb 29 March 2022 c1409

46 HL Deb 29 March 2022 c1409

2.4 Other provision about safety, standards, etc (Part 5)

Remediation and redress: Paying for fire safety work (clauses 115-134)

On 10 January 2022, Michael Gove confirmed that a proposed loan scheme to fund remediation work on blocks with unsafe cladding of between 11 and 18 metres would not be taken forward. He said:

> I can confirm to the House today that no leaseholder living in a building above 11 metres will ever face any costs for fixing dangerous cladding and, working with Members of both Houses, we will pursue statutory protection for leaseholders and nothing will be off the table. As part of that, we will introduce immediate amendments to the Building Safety Bill to extend the right of leaseholders to challenge those who cause defects in premises for up to 30 years retrospectively.[47]

Government amendments were added to Part 5 of the Bill in Grand Committee, together with a new schedule, to give effect to the commitments made on 10 January 2022. Further amendments were added on report.

The Government published a Building safety leaseholder protections factsheet which was last updated on 23 March 2022.

Leaseholder protections

Lord Greenhalgh introduced amendments in Grand Committee on 28 February 2022. He said the leaseholder protection provisions "will make landlords liable, partially or in full, for the costs of remediating historical building safety defects."[48] A series of definition clauses were added to the Bill to set out the types of defects, buildings and leases that are in scope of the protections.

The new schedule (Remediation costs under qualifying leases) provides for circumstances in which service charges for historical building safety issues cannot be passed to leaseholders, and places a cap on charges where they can be passed on.

The protections under the Bill will apply to a "qualifying lease" – one of the conditions for qualifying is the lease having been granted before 14 February 2022. Lord Greenhalgh said "day zero for the building safety reset is 14 February 2022. Once we have got this Bill through, that is the date we will start from."[49]

47 HC Deb 10 January 2022 c285
48 HL Deb 28 February 2022 c244GC
49 HL Deb 28 February 2022 c263GC

The Government has described its approach as a "cascade" or "waterfall" of responsibility. Lord Greenhalgh explained how the provisions are intended to work regarding responsibility for costs:

> Paragraph 2 of the new schedule provides that, where the landlord is responsible or has links with the developer that is responsible for the defect, they will be required to pay in full for the historical building safety issues. This will ensure that, as far as possible, those who are responsible for creating the defects take on the burden of costs and remove all liabilities for the historical defects from innocent leaseholders.
>
> A definition of an "associated person", for the purpose of determining which building owners have links to the developers of the building, is set out in Amendment 67. Similarly, where building owners are not linked to the developer but can afford to pay, they will be required to put the money up to do so and pay in full. We intend to table further amendments to provide details of the affordability test on Report. I welcome any suggestions from noble Lords on how this could work.
>
> Paragraphs 5 to 7 of the new schedule provide that, where building owners are not linked to the developer and are not able to afford the remediation, some costs can be passed on to leaseholders. This will be subject in most cases to caps of £10,000, or £15,000 for leases in Greater London. These caps will limit how much leaseholders can be asked to pay for non-cladding costs, after—I repeat, after—building owners and landlords have exhausted all other cost recovery options, such as litigation under the Defective Premises Act or the new construction products causes of action we have just debated.
>
> The amendments also provide that any costs paid out by leaseholders over the past five years will count towards the cap, meaning some leaseholders will pay nothing more. They also provide that cladding costs cannot be passed on at all. Paragraph 6 sets out caps to be applied to very high-value properties. It provides that, for properties with a value of over £1 million but under £2 million, the maximum permitted charge is £50,000 and, for properties with a value of over £2 million, the permitted maximum is £100,000.[50]

The Government's Building Safety Fund will meet some of the costs of cladding remediation. The Government has said developers "should commit to self-remediate all unsafe high and medium-rise buildings for which they are responsible."[51] As previously noted, on 13 April 2022, the Government announced agreement with developers to contribute a minimum of £2 billion towards cladding remediation on their buildings of 11 to 18 metres. Up to £3 billion will be raised for this purpose through the Building Safety Levy (clause 57) over ten years.[52] The press release said this would "ensure no leaseholder in medium-rise buildings faces crippling bills, even when their developer cannot be traced."[53]

Further Government amendments were agreed on report to extend leaseholder protections. Lord Greenhalgh stressed the Government was

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50 HL Deb 28 February 2022 c244GC

51 HL Deb 24 February 2022 c167GC

52 DLUHC, Agreement with major developers to fund building safety repairs, 13 April 2022

53 As above.

"changing the private contract between the landlord and the leaseholder by stating that leaseholders will not pay any costs except in certain circumstances."[54] He said the Government can do this "if it is in the general interest to do so, provided there is a fair balance between all the parties."[55]

Lord Greenhalgh explained the further protections for leaseholders:

- Leaseholders will not pay for non-cladding costs "where the landlord is the developer or is linked to the developer,[56] where the landlord is wealthy[57] and, finally, where the leaseholder's property is valued at less than £325,000 inside London and £175,000 outside."[58]

- The value of a qualifying lease at the qualifying time will be "determined by the most recent sale price on the open market, prior to 14 February this year, uprated in accordance with the UK House Price Index published by the Office for National Statistics."[59]

- Where the absolute protections don't apply, contributions are capped. Costs paid in the last five years count against the cap. The repayment period has been extended to 10 years (amendment 166).[60]

- Landlords will not be able to pass on costs to a qualifying leaseholder relating to professional services, including legal costs (amendments 170 and 171). The legal burden of proving they are entitled to pass on capped remediation costs will lie with the landlord (amendment 177).[61]

Lord Young of Cookham (Con) and others questioned the degree to which the Government amendments would deliver on Michael Gove's commitments of 10 January 2022. He argued the amendments would not "deliver the policy I have just quoted: statutory protection that extends to all work required to make building safe."[62]

The following gaps and questions were raised in Grand Committee and again on report:

54 HL Deb 29 March 2022 c1517

55 HL Deb 29 March 2022 c1517

56 This includes non-qualifying leaseholders such as commercial leaseholders and those with more than three UK properties (amendments 141 to 143 to what is now schedule 8 of HL Bill 144).

57 A landlord with a total net worth of more than £2 million per in scope building as of 14 February 2022 will not be able to pass on any costs to qualifying leaseholders (amendment 152 to what is now schedule 8 of HL Bill 144).

58 HL Deb 29 March 2022 c1517 (amendment 154)

59 HL Deb 29 March 2022 c1518 (amendment 164)

60 HL Deb 29 March 2022 c1518

61 HL Deb 29 March 2022 c1519

62 HL Deb 24 February 2022 c161GC

- **Resident-owned buildings where leaseholders have enfranchised and jointly own the freehold.**[63]

Lord Greenhalgh confirmed these freeholders would not be expected to meet all remediation costs:

> My noble friend Lord Young asked the very important question of whether enfranchised properties will have to pay all the costs for remediation. I want to be absolutely clear—read my lips—no, they are not. This will not apply to buildings which have exercised a right to collective enfranchisement, or to commonhold land, which in this case, admittedly, is very few buildings. New subsection (3) in government Amendment 63 is very clear on that point.[64]

Lord Young (Con) returned to this question on report where he pressed an amendment to a vote to "expand the service charge protections to enfranchised buildings and buildings where the right to manage has been exercised."[65] The amendment was agreed to by 146 votes to 114.[66]

- **Who will fund the difference in the cost of the work on a building over 11 metres with non-cladding defects where the caps on leaseholder contributions applies?**[67]

The caps of £10,000 and £15,000 were described as "another deviation from the policy of protecting the leaseholder."[68] Lord Greenhalgh clarified that freeholders and interim landlords[69] would pay "the remainder":

> The waterfall or cascade is in five parts. We start with the developers. Then we move to the freeholders, via an affordability test, and other interim landlords; that is the second wave of the cascade. The third is freehold and interim landlords seeking redress from third parties that have contributed to pollution. The fourth is leaseholders who pay a capped amount—that is for non-cladding costs, to be clear, and is where Florrie's Law kicks in. Of course, the fifth is freeholders and interim landlords who pay the remainder.[70]

The Earl of Lytton (crossbench) pressed amendment 234 to a vote on report to require the Secretary of State to:

> ...set up a fund financed from a wide industry levy, leaving the Secretary of State free to make the necessary regulatory arrangements for which powers in the Bill already exist. The basic premise is that the Government set up a building safety cost panel, funded out of an industry levy, to address the funding shortfall that I have referred to.[71]

63 HL Deb 24 February 2022 c163GC
64 HL Deb 28 February 2022 c262GC
65 HL Deb 29 March 2022 c1509
66 For more detail see section 3.3 of this paper.
67 HL Deb 24 February 2022 c164GC
68 HL Deb 24 February 2022 c164GC
69 E.g. head lessees.
70 HL Deb 28 February 2022 c261GC
71 HL Deb 29 March 2022 c1476

His amendment was not agreed (117 votes to 94).[72]

- **The lack of assistance for leaseholders in buildings lower than 11 metres or with fewer than five storeys.**

Lord Young said, "they are exposed to unlimited costs."[73] On report, the Earl of Lytton pressed amendment 115 to a vote to extend cost protections in the Bill to leaseholders in buildings of all heights containing two or more residential buildings. His amendment was agreed by 156 votes to 123.[74]

- **Why owners of buy-to-let flats in affected blocks would not qualify for the same protection from non-cladding costs as other leaseholders?[75]**

In response, Lord Greenhalgh said:

> All buy-to-let landlords benefit from our £5.1 billion building safety fund to fix cladding on high-rise buildings, irrespective of how many properties they own. In January we committed to additional protections on non-cladding costs for residential landlords who have had to move out of their flat. This week's amendments deliver on that and go even further by protecting landlords who own two properties.
>
> We are clear that developers must pay to fix cladding on medium-rise buildings; the principle of protecting leaseholders living in unsafe buildings is paramount. The policy is fundamentally designed to ensure that those living in their own home—including those who have moved out and sublet—do not face unaffordable remediation bills.[76]

He acknowledged "there are landlords with pretty narrow shoulders" and said he'd like to consider whether "we have got the policy intention right."[77]

The issue was returned to on report. Peers sought to extend the number of buy-to-let properties a leaseholder could own and still benefit from protections. Lord Greenhalgh referred to amendments tabled by the Government "which will see people with a total of up to three UK properties eligible for the protections."[78] He said the Government needed to take a "proportionate approach and ensure our measures are fair to all parties."[79]

Government amendment 122, which provides for a lease to be a qualifying lease if a relevant tenant owns no more than two dwellings (excluding their interest under the lease), was agreed.[80]

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72 HL Deb 29 March 2022 c1564
73 HL Deb 24 February 2022 c164GC
74 HL Deb 29 March 2022 cc1535-7 – for more detail on the amendment see section 3.2 of this paper.
75 HL Deb 28 February 2022 c249GC
76 HL Deb 28 February 2022 cc262-3GC
77 HL Deb 28 February 2022 cc263GC
78 HL Deb 29 March 2022 cc1531
79 HL Deb 29 March 2022 cc1531
80 HL Deb 29 March 2022 cc1540

At third reading, the Lords Bishop of St Albans expressed continuing concerns, including that the definition of a qualifying lease was "London-centric":

> But I remain concerned by the definition of a qualifying lease and its failure to protect those receiving a state pension who rely on rental income from a lease to sustain themselves. I am not entirely certain how these pensioners who do not qualify will pay for non-cladding remedial costs, but that is a hurdle that the Government may face in the near future.
>
> Furthermore, I continue to think that the Government have taken a rather London-centric view when defining a qualifying lease. I personally find it odd that someone with three leases worth, say, a total of £2.7 million, or £900,000 per dwelling, would qualify to pay nothing as per the latest amendments, but an individual with, say, five leases totalling £500,000, or £100,000 per lease, would be liable for the entirety of their non-cladding remedial costs on four of those leases. Again, I can only speculate as to how this might play out once the Bill passes.[81]

- **The impact on social landlords of having to meet the cost of remediation work above the level of capped leaseholder contributions.[82]**
- **Who will remediate 'orphaned' buildings?**

This term describes those blocks where there is no developer to sue and the freeholder has no resources. The concern is that costs of non-cladding work will fall on leaseholders.[83] Lords spoke to various amendments on report, all of which aimed to plug this gap through the creation of "a remediator of last resort." Lord Greenhalgh responded to these points:

> I understand where my noble friend Lord Young is coming from. We have asked the industry to provide a fully funded solution for both the cladding and non-cladding costs, including fixing their own buildings and contributing to a fund for the very orphan buildings he has highlighted of between 11 and 18 metres that need cladding remediation. The focus of the industry is on fixing its own buildings, and therefore we can begin to be more focused on where we apply taxpayer funds.[84]

Lord Young pressed him on what happens where there is a building and no one has any money "the leaseholders cannot afford it, there is no freeholder and there is no developer or contractor to pursue? Who then puts that building right?" Lord Greenhalgh said:

> My Lords, in practical terms, we have a £5.1 billion fund, of which we have committed the first stage of £1 billion. We have an additional £4.1 billion for buildings over 18 metres and an additional £4 billion for cladding remediation, yet we are asking industry to fix its own buildings. That gives us the ability to focus on the few buildings my noble friend is talking about, because we have

81 HL Deb 4 April 2022 c1848
82 HL Deb 24 February 2022 c164GC
83 HL Deb 29 March 2022 c1470
84 HL Deb 29 March 2022 c1485

> got the developers that built these buildings to go on and fix them in a proportionate way and we do not have to use the core of money that we already have. Noble Lords can test the opinion of the House, but that is a practical way of dealing with the problems—focusing the current funds on those few buildings where that scenario applies.[85]

- **The position of leaseholders who have already paid for remediation work.[86]**

- **The risk of litigation**

Baroness Pinnock (Liberal Democrat) said:

> We know that developers are already seeking legal advice as to how these levies and responsibilities can be circumvented, and material manufacturers are going down the same route, as will contractors and subcontractors. Litigation will ensue and the risk is that the work fails to be undertaken because no money is raised. That is unfortunately where this might lead if we are not careful.[87]

On report, Lord Greenhalgh moved amendments "to strengthen our solution in law to ensure that the industry pays to remediate all unsafe high-rise and medium rise buildings".[88] The definition of 'associated persons' (clause 120 of Bill 144) was amended to ensure partnerships are captured.

Schedule 8 was amended to define joint ventures to "ensure that well-resourced companies cannot make use of complex corporate structures to evade their responsibilities." He said these amendments would "pierce the corporate veil."[89]

Remediation orders (clause 122)

A new provision was added to the Bill in Grand Committee (Government amendment 69) to allow First-Tier Tribunals to make a remediation order when an interested person has applied for one. Interested persons are defined as the regulator, local authority, fire and rescue authority or another person specified in regulations. A remediation order, where issued, "will require a landlord to remedy defects in their building, as specified in the order."[90]

On report, Government amendments broadened the persons who will be able to apply to a Tribunal to include "a person with a legal or equitable interest in the relevant building or any part of it."[91] Lord Greenhalgh said this would

85 HL Deb 29 March 2022 c1486
86 HL Deb 28 February 2022 c252GC
87 HL Deb 24 February 2022 c185GC
88 HL Deb 29 March 2022 c1466
89 HL Deb 29 March 2022 c1466
90 HL Deb 28 February 2022 c245GC
91 HL Deb 29 March 2022 c1467

enable a leaseholder to apply to a tribunal to require a landlord to undertake remediation work if they are not already doing so.[92]

A further amendment clarified that a remediation order may be made against a person with a repairing obligation for part of a relevant building "even if they would not otherwise be classed as a relevant landlord, to allow a remediation order to be made against, for example, a managing agent."[93] Remediations orders will be enforceable by the county court.

Remediation contribution orders (clause 123)

A further Government amendment (70) was added in Grand Committee to give First-Tier Tribunals power to make a remediation contribution order where considered just and equitable to do so, "to require an associated company to make specified payments, at a specified time or event, to the landlord to remedy relevant fire safety defects in the building."[94] In addition to the interested persons listed in the section on remediation orders (above) "leaseholders and other persons who have a legal or equitable interest in the building" will be able to apply for an order.[95]

The Government factsheet on Building safety leaseholder protections dated 23 March 2022 says:

> Our new Remediation Contribution Orders do allow for polluters – such as responsible developers – to be forced to reimburse leaseholders for costs they have already paid out.[96]

On report, Government amendments broadened the companies which can have an order made against them to include developers and previous landlords. Lord Greenhalgh said: "This will provide a potentially easier route to secure funding for remediation than through civil action, such as under the Defective Premises Act."[97] The types of corporate bodies that can have an order made against them now include "partnerships and limited partnerships through Amendments 186, 187 and 192."[98]

The Secretary of State has taken a power to apply for an order and prescribe other persons who can apply through secondary legislation. Lord Greenhalgh said:

> This is to provide flexibility in case it becomes apparent there are further groups which should be granted the ability to apply for a remediation contribution order.[99]

92 HL Deb 29 March 2022 c1467
93 HL Deb 29 March 2022 c1467
94 HL Deb 28 February 2022 c245GC
95 HL Deb 28 February 2022 c245GC
96 DLUHC, Building Safety Bill: factsheets, updated 23 March 2022
97 HL Deb 29 March 2022 c1467
98 HL Deb 29 March 2022 c1467
99 HL Deb 29 March 2022 c1468

He described remediation contribution orders as "an important part of the wider leaseholder protection package".[100]

Insolvent landlords (clause 124)

As the Bill progressed there were several references to recovering costs from insolvent companies. In Grand Committee, Lord Greenhalgh introduced amendment 71 to "enable the liquidator to apply to the court to access the assets of associated companies to contribute to the remediation of building safety defects."[101] He explained the rationale behind the amendment:

> All too often, companies let subsidiaries go into liquidation to cut their losses. It is morally wrong that they can just fold a company up and leave leaseholders in unsafe buildings with outstanding building safety defects and the corresponding liabilities. The court's decision will be based on whether it is just and equitable to do so—in other words, whether it is right for that associated company to help to meet the building safety remediation liability of the failing landlord.
>
> Some unscrupulous companies may try and wind up subsidiaries before these provisions come into force, which is why we have included provisions to enable liquidators to pursue associated companies of those landlords who are currently going through insolvency proceedings. It is unfair that innocent leaseholders have had to pay for remediation of building safety defects while those who caused the fire safety issues are able to exploit company law to escape liabilities that are morally theirs.[102]

The Earl of Lytton asked whether the courts would have discretion to "override the hierarchy of creditors and provide remediation funding out of funds that would otherwise have gone to secured creditors, such as HMRC and mortgage lenders".[103] Lord Greenhalgh acknowledged this as "an incredibly important point" and said the Government was looking into it.[104]

Government amendments were agreed on report to make changes to the operation of clause 124:

> Amendment 194 provides that a person acting as an insolvency practitioner in relation to the company may apply for an order under the clause. This ensures that a wider range of insolvency procedures, such as company voluntary arrangements, are in scope of this clause.
>
> Amendment 197 sets out that "insolvency practitioner" has the same meaning as in the Insolvency Act 1986.
>
> Amendment 196 makes clear that contributions made by an associated company under the clause are to be used for the purpose of meeting costs associated with relevant defects. Amendments 195 and 198 set out that an

100 HL Deb 29 March 2022 c1468
101 HL Deb 28 February 2022 c245GC
102 HL Deb 28 February 2022 c245GC
103 HL Deb 28 February 2022 c255GC
104 HL Deb 28 February 2022 c262GC

> order under the clause may be made against a partnership associated with the company that is being wound up.[105]

Building industry schemes (clauses 125-126)

Government amendment 72 was introduced in Grand Committee to enable the Secretary of State to establish one or more building industry schemes. Regulations will establish and make provision for the scheme(s). Lord Greenhalgh explained the purpose of the amendments:

> The first two amendments in this package would give the Secretary of State a power to establish a scheme or schemes for the building industry. This would act as a means of identifying which industry actors, including developers, and cladding and insulation manufacturers, have done the right thing and committed to act responsibly. Regulations will set out which persons in the building industry may be members of the scheme. In the first instance, the Government are minded to focus this measure on major developers of residential buildings and manufacturers of cladding and insulation. We are keeping this under review as talks with industry continue. Industry actors will be considered "responsible" if they meet published membership criteria for a scheme for which they are eligible. The membership criteria for a scheme will be set out and will include a commitment to rectifying building safety defects. The distinction between responsible actors and actors who have failed to do the right thing will be taken into account by the Government and regulators in their interactions with firms that are eligible for inclusion in a scheme.[106]

On report, Government amendments were agreed to add detail to these powers. Lord Greenhalgh described their purpose:

> ...to reflect more clearly the Government's intentions and to provide Parliament and the public with more information on the purpose of any building industry scheme or schemes we set up, together with indicative examples of the kinds of membership conditions that eligible industry actors may need to meet to be part of a scheme.[107]

Prohibition on development and building control (clauses 127-128)

Government amendment 74 was introduced in Grand Committee to give the Secretary of State power to make regulations under which a person of a prescribed description may be prohibited from carrying out development of land in England. Prohibition would override any planning permission granted.

Prohibition may be imposed for purposes connected with security, the safety of people in or about buildings in relation to risks arising from those buildings, or improving the standard of buildings. Lord Greenhalgh said:

> The third amendment would give the Secretary of State a power to block developers that have failed to act responsibly from carrying out development for which planning permission has been granted, and to make sure that any breach of this block would be subject to enforcement action. The amendment would also allow the Secretary of State through regulations to require a

105 HL Deb 29 March 2022 c1468
106 HL Deb 24 February 2022 c168GC
107 HL Deb 29 March 2022 c1466

> developer to serve a notification of proposed development commencement and to prevent the grant of certification of lawful development for affected developers, should they seek it.[108]

A further new clause was added to give the Secretary of State power to make regulations under which a person of a prescribed description may be prohibited from, amongst other things, applying for building control approval or from depositing plans. Lord Greenhalgh said:

> The fourth amendment would give the Secretary of State the power to prevent developers that have not committed to act responsibly, as set out in regulations, obtaining building control sign-off on their developments. This will make selling developments difficult for these developers, as building control approval is in most cases a prerequisite to occupancy and sale. The building control prohibitions will be imposed by regulations that will also set out details such as prescribed documents.[109]

Building liability orders (clauses 129–131)

Government amendments were introduced in Grand Committee to enable the High Court, where it is considered just and equitable to do so, to issue a building liability order.

Where an order is made, it will impose certain liabilities relating to buildings in England on a person associated with the person who is primarily liable.[110] A further new clause was added to define an "associated person". Liability might arise under the Defective Premises Act 1972 or section 38 of the Building Act 1984, or as a result of a building safety risk.

On report, a new clause (131) was added by the Government "to support potential claimants in understanding which companies are associated, mitigating against corporate groups employing ever-more opaque and complex structures, which claimants will struggle to unravel."[111] Clauses 129 and 130 will apply in Wales after agreement was reached with the Welsh Government.[112]

Lord Greenhalgh addressed remarks made in Grand Committee about compatibility with human rights legislation:

> I confirm that we consider that the provisions on building liability orders are compatible with human rights legislation. We expect the High Court to consider a variety of factors when deciding whether to grant a building liability order, including the extent of the damages being sought and whether a fair trial can take place. We are considering whether we need to do any further work on this, such as producing guidance with the Judicial College.[113]

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108 HL Deb 24 February 2022 c168GC
109 HL Deb 24 February 2022 c168GC
110 HL Deb 24 February 2022 c277-8GC
111 HL Deb 29 March 2022 c1468
112 HL Deb 29 March 2022 c1468
113 HL Deb 29 March 2022 c1468

The New Homes Ombudsman Service (clauses 135-142)

Lord Greenhalgh, for the Government, introduced a series of amendments in Grand Committee to expand the New Homes Ombudsman Service (NHOS) provisions to Northern Ireland. This, he said, "ensures that new-build home buyers will have improved protection when things go wrong, no matter where they live in the UK."[114]

Lord Best (crossbench) sought to amend the Bill (amendment 97A) to extend the remit of the NHOS to allow owners to refer complaints for up to six years after a property was first purchased.[115] Lord Greenhalgh rejected the amendment on the basis it would "introduce a new unknown burden" on those in the scheme. He assured Lords that "home buyers will retain their existing rights to seek redress in law and elsewhere in this Bill."[116]

On report, Baroness Scott moved Government amendments to clause 139 (now clause 137 of HL Bill 144) to clarify definitions of 'new build home' and 'developer':

> [the definitions] make sure that extensions to residential buildings to create new homes would also fall under the new homes ombudsman's remit; for example, where a new floor is added to an existing residential building to create new flats. They also make it clear that the ombudsman's remit covers works which create new homes within an existing residential building, rather than only changes to buildings previously used for other purposes.[117]

The amendments were agreed.

New build home warranties (clauses 143-144, added to the Bill)

Most new-build properties are sold with a warranty lasting for around ten years, such as the NHBC Buildmark scheme. A defects warranty is de facto obligatory for new homes purchased with a mortgage, as lenders will not provide finance without it.

Several studies have highlighted issues with the protection offered by warranties. The 2007 Callcutt Review of Housebuilding Delivery (PDF) identified concerns about caveats within warranties. It was felt they may not offer adequate protection for consumers.[118]

The Office of Fair Trading (OFT) commissioned Professor Sommerville of Glasgow Caledonian University to carry out research into this issue as part of its 2008 study of the homebuilding market (PDF). OFT concluded "while not perfect, warranty provision in the UK is relatively robust." It acknowledged

114 HL Deb 24 February 2022 c128GC
115 HL Deb 24 February 2022 c125GC
116 HL Deb 24 February 2022 c138GC
117 HL Deb 29 March 2022 cc1462-3
118 Callcutt Review of Housebuilding Delivery (PDF), 2007, p71

there would always be limitations with an insurance policy, but found evidence of consumers thinking warranties cover much more than they do.[119]

The All-Party Parliamentary Group (APPG) for Excellence in the Built Environment published More Homes, Fewer Complaints in 2016 which also identified an issue with consumers believing that warranties cover more than they actually do. There was confusion over builders' responsibilities in the first two years following completion, i.e., during the defects liability period.[120]

On report, Baroness Scott moved Government amendments to address concerns about new-build warranties. She referred to discussions having taken place with warranty providers, developers and financial regulators on the matter, and said "in the absence of a proposal from the market, the Government have concluded that intervention is necessary."[121] She explained the purpose of the new clauses, which would set a minimum new-build warranty length at 15 years:

> I am therefore pleased to introduce amendments to mandate in law that a developer must provide a warranty to a purchaser of a new home. The minimum length of warranties on new-build homes is set at 15 years, in line with the prospective limitation period for action under the Defective Premises Act 1972, and we are taking a power to set out in regulations the minimum level of coverage provided by those warranties.
>
> Amendment 243 also includes powers to set the period during which the developer itself remains responsible for fixing defects, aiming to keep those who caused the problem on the hook for longer. We will propose regulations setting out, for the first time, minimum levels of warranty coverage and standards of service to be provided, as well as setting out in law that the benefit of the policy would be transferable when a property is sold within the policy term.
>
> Finally, this amendment will also provide for a further power to make regulations imposing a financial penalty of up to £10,000 or 10% of the sale value, whichever is greater, on any developer which fails to meet these new requirements without a reasonable excuse.
>
> Together, these amendments will better support home owners, giving them greater protection and peace of mind when purchasing new-build homes and improving redress for when things go wrong.[122]

The new clauses were added to the Bill.

Construction products (clauses 145-154, added to Bill)

On 28 February in Grand Committee, Lord Greenhalgh explained he had tabled a series of amendments "that will help to make sure that construction

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119 OFT 1020, Homebuilding in the UK – a market study (PDF), 2008, p137 onwards & Annex J. There is a full list of annexes to the report.

120 APPG for Excellence in the Built Environment, More Homes, Fewer Complaints, July 2016

121 HL Deb 29 March 2022 c1463

122 HL Deb 29 March 2022 c1463

product companies pay to put right building safety issues that they have contributed to causing". He did not intend to move these amendments but said he had "laid them to invite the scrutiny of noble Lords" and would "listen carefully to the debate and bring these measures back at a future stage".[123]

He explained the amendments would enable claims to be brought against construction product manufacturers and sellers involved in creating building safety defects:

> The new clauses in Amendments 107 to 109 and 144 introduce two new causes of action against construction product manufacturers. There are currently almost no routes which allow leaseholders to hold construction product manufacturers accountable for their role in the creation of serious building safety defects. [...]
>
> These causes of action will enable claims to be brought against construction product manufacturers and sellers for their role in the creation of building safety defects. They will apply if a product has been mis-sold or is found to be inherently defective, or if there has been a breach of construction product regulations. If this contributes to or causes a dwelling to become "unfit for habitation", a civil claim will be able to be brought through the courts under these causes of action.[124]

Amendment 107 would insert a new clause on liability for failure to comply with construction product requirements. Amendment 108 would insert a new clause on liability relating to cladding products. Amendment 109 would set the limitation periods for the rights of action created by clause 107 at 30 years retrospectively, and for clause 108 at 15 years prospectively. Lord Greenhalgh explained:

> The cause of action relating to cladding products in Amendment 107 will be subject to a 30-year retrospective limitation period. The broader cause of action relating to all construction products in Amendment 108 will be subject to a 15-year prospective limitation period. These limitation periods reflect the changes we are making to the limitation period under Section 1 of the Defective Premises Act. These causes of action will ensure that construction product manufacturers can be held responsible for the costs of rectifying their mistakes.[125]

Lord Greenhalgh explained that amendments 110, 113, 114, 141 and 145 would:

> create a power to make regulations to require construction products manufacturers and their authorised representatives, importers and distributors to contribute towards the cost of remediation works where they have caused or contributed to dwellings being unfit for habitation.[126]

Amendment 110 would insert a new clause authorising the Secretary of State to require persons convicted of certain offences relating to breaches of

123 HL Deb 28 February 2022 c219GC
124 HL Deb 28 February 2022 c219GC
125 HL Deb 28 February 2022 c219GC
126 HL Deb 28 February 2022 c220GC

construction product regulations to contribute to the costs of making a dwelling or building fit for habitation (a "costs contribution notice").

The cost would be "such amount as the Secretary of State considers just and equitable in respect of the costs that the person has reasonably incurred, or in the view of the Secretary of State is likely to reasonably incur, in respect of works to make the building or dwelling fit for habitation".[127] Lord Greenhalgh said:

> Amendment 114 introduces a new schedule that will give the Secretary of State the power to appoint an independent person to inspect buildings where the relevant product has been used. This assessment will consider whether the conditions for serving a costs contribution notice are met, and the remediation works required.
>
> Amendment 114 will enable the Secretary of State to make regulations setting out a process for establishing costs that a company should be required to pay, which will take account of its ability to pay, and to whom payment should be made. This amendment will also enable the Secretary of State to require a company to contribute towards the cost of building assessments carried out as part of this process. Setting out this scheme in secondary legislation will enable the necessary interaction between costs contribution notices and construction products regulations, including those that will be made using the powers in this Bill.[128]

Reactions to Government amendments

The Earl of Lytton made several points about the amendments on construction products. Referring to amendments 107 to 110, he commented on the "interface between building product on the one hand and workmanship on the other", highlighting "the many arguments, on and off the building site, over whether it was the product that was not suitable, whether it was its application, per the designer, that was incorrect or whether the workman who put it all together did not do the right job or did it under unsuitable conditions".[129]

In relation to the proposed limitation periods of 15 years and 30 years, the Earl of Lytton spoke of the "life expectancy of certain construction products". For example, he highlighted that "intumescent seals on cladding systems typically have a guaranteed life of 15 years" and added "there are other building components [...] that do not have a 30-year life and may not even have a 15-year life". He asked "that that be borne in mind when these regulations are made", reiterating "the point that all these matters are dependent on the duty life, the maintenance, the installation and, to some extent, the design and suitability for purpose, and workmanship is very important there".[130]

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127 HL Bill 98-III, Third marshalled list for Grand Committee, 24 February 2022, amendment 114

128 HL Deb 28 February 2022 c220GC

129 HL Deb 28 February 2022 c222GC

130 HL Deb 28 February 2022 c228GC

Baroness Pinnock questioned who would be responsible for the testing and certification of construction products, and who would be accountable. She also questioned the roles of different bodies such as the Office for Product Safety and Standards, Building Research Establishment, British Board of Agrément and trading standards, and how they would work together. She stated that with Grenfell "the cladding was there but the insulation was awful":

> It is about how the products fit together. That is what those bodies [the Building Research Establishment and British Board of Agrément] currently do, so where does that fit into this office of product safety and standards? Will it use the research expertise of both those bodies to come to a conclusion about product safety? How will that work? [...]
>
> We need to understand this, because it is critical to future building safety that any new builds have construction materials that are safe for the purpose for which they are to be used—and safe in conjunction with other materials in the building. I need to understand how that will be done and who will finally be accountable. Who will put their name at the bottom saying, "I take responsibility"? Otherwise, those buildings will not be safe.[131]

Lord Stunell said:

> The Construction Products Association is keen to understand what the Government believe a construction product is, because that is by no means a simple single list. There is reference in the legislation to things being "safety-critical"; it turns up in Schedule 11 and elsewhere. The definition of that may include or exclude certain products, or perhaps it is not relevant at all, but the Construction Products Association and I certainly do not know the answer to that. Again, this needs to be sorted out.[132]

Lord Stunell's amendment 107A sought to probe whether the retrospective liability provisions in Government amendment 107 would only apply to "higher risk" buildings. He explained that amendments 107 and 107A "relate to product liability and, in particular, to how wide the scope of that liability will be". He said:

> On the best reading I can make of the Government's amendments as a whole, that liability will certainly exist for any higher-risk building constructed in the past 30 years where there is a building safety risk and where defective products are the cause or a contributing cause to that building being unfit for habitation. Do other government amendments that widen the net of the building safety levy to all buildings, not just to higher-risk buildings, mean that a producer or supplier may be on the hook not just for 40,000 higher-risk buildings, but for 24 million other buildings? It seems uncertain in the Bill.
>
> My amendment would limit their risk simply to higher-risk buildings. Can the Minister tell us whether there is or is not a clear connection between levy liability and product liability? If the 30-year product liability is to come in for the higher-risk buildings, there are some significant practical problems that I will come to in a moment. If, on the other hand, it applies to all 24 million buildings, then not only are the practical problems multiplied but a wide door

131 HL Deb 28 February 2022 c225GC and c226GC

132 HL Deb 28 February 2022 c230GC

> opens for what the Construction Products Association has described to me as "ambulance chasers".
>
> The call to the house owner goes something like this: "Has your home had an extension in the last 30 years? You may be entitled to a refund. Press one to learn more." In neither case—whether higher-risk buildings or all buildings—is it at all likely that the records of who specified the defective product 30 years ago will exist. That will be the test, of course, because making a product is not the offence; the offence is having it in the wrong place or fixed in the wrong way.[133]

Lord Khan of Burnley noted that Government amendment 141 would provide for regulations under the new clause relating to costs contribution notices to be under the draft affirmative procedure (approved by both Houses). He said he wanted "to ask the Minister about the power given to government to make new legislation. What scrutiny will these new powers be subject to?".[134]

Government response

In Grand Committee, Lord Greenhalgh said "we are tabling the amendments but not moving them, but we have done all the checks, as you would expect, and taken legal opinion and so forth to make sure that they are all workable, and indeed lawful".[135]

Lord Greenhalgh clarified "when we are talking about construction product manufacturers, we are talking not about all construction product manufacturers but about those that contributed to this crisis". He added, "whether they were installed incorrectly or not is irrelevant: these products should never have been put on our buildings" and "we can look at the responsibility for that, but the responsibility also lies with the manufacturer, in large part, and in those cases, the polluter must pay".[136]

In response to the Earl of Lytton's points about the interface between products and their installation, Lord Greenhalgh explained "the way in which those products are installed is a matter for the construction company. The construction company, not the manufacturer, is responsible for following the instructions and installing the product correctly".[137]

In response to Baroness Pinnock's points about regulation and testing of construction products, Lord Greenhalgh said:

> We have created a national regulator. In the same way as we have a building safety regulator in shadow form until the Bill gets Royal Assent, the Bill will put into statute a national regulator for construction products in the Office for Product Safety and Standards. […] This Bill formalises the national regulator for construction products and there are at the same time local regulators of products […] that provide that local role. It is the national and local regulation

133 HL Deb 28 February 2022 c229GC
134 HL Deb 28 February 2022 c232GC
135 HL Deb 28 February 2022 c233GC
136 HL Deb 28 February 2022 c234GC
137 HL Deb 28 February 2022 c235GC

> of construction products that provides the regulatory environment for construction products.
>
> The noble Baroness also raised construction products testing. This is something that the inquiry showed as an area of concern. The Building Research Establishment was a nationalised entity that it was privatised in the 1980s, I think [...] but we also have the British Board of Agrément, which has always been in the private sector. Neither of those have come out as great, robust testing houses, which is why my predecessor as Secretary of State asked for a construction products testing review. I believe that report is nearly finalised. I will ask for a copy. There will be recommendations on how we improve the robustness of construction products testing.[138]

The Government amended the Bill at report stage on 29 March 2022 to allow manufacturers, distributors and sellers of construction products to be pursued where defective or mis-sold products have been used in the construction of a dwelling, or where further works are carried out to that dwelling, rendering it unfit for habitation. Lord Greenhalgh explained that "these amendments make it easier for those affected to force those responsible for defective buildings—developers and construction products manufacturers—to pay".[139]

On behalf of the Government, Baroness Scott of Bybrook explained Government amendments 245 to 249 on liability for construction products would add new clauses to introduce a new cause of action against construction product manufacturers and sellers. Baroness Scott said this would allow for claims to be brought against product manufacturers and sellers "for their role in causing problems associated with building safety":

> It will apply where a construction product has been mis-sold or is found to be inherently defective, or if there has been a breach of the construction products regulations applicable at the time and it has been used in the construction of a dwelling or works on that dwelling. If this contributes to a dwelling being unfit for habitation or causes it to be so, a civil claim will be able to be brought through the courts under this cause of action.

On the time limitations, she added:

> This cause of action will be subject to a 30-year limitation period retrospectively in relation to cladding products only. The new cause of action will also apply retrospectively to all construction products and be subject to a 15-year limitation period. These limitation periods mirror the changes we are making to the Defective Premises Act. This cause of action will help to ensure that construction products manufacturers, distributors and others are held responsible for the cost of rectifying their mistakes, where a dwelling is unfit for habitation as a result of those mistakes.[140]

Baroness Scott explained amendments 255 and 271 were consequential to amendments 245 to 249.[141] Amendment 255 would enable construction

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138 HL Deb 28 February 2022 c234GC

139 HL Deb 29 March 2022 c1484

140 HL Deb 29 March 2022 c1555

141 HL Deb 29 March 2022 c1555

product regulations to make consequential amendments. Amendment 271 would ensure the new clauses extend in the first place to England and Wales and Scotland, with power to extend them to Northern Ireland and to make provision as to their application in Northern Ireland.

Baroness Scott explained amendments 250, 251, 252 and 253 would enable regulations to be made to "require construction products manufacturers, their authorised representatives, importers and distributors to contribute towards the cost of remediation works where they have caused dwellings to be unfit for habitation or contributed to dwellings being unfit for habitation".

This would "enable the Secretary of State to serve a costs contribution order on a company that has been successfully prosecuted under the construction products regulations". She explained:

> Amendment 253 will allow the Secretary of State to appoint an independent person to inspect buildings where the relevant product has been used. They will assess whether the conditions for serving an order are met, the remediation works required and the cost of those works.
>
> Amendment 251 will also create a power to make regulations to take an alternative route through the courts. This will enable the Secretary of State to apply to a court for a costs contribution order to be made against a company. The grounds for making an application would be the same.
>
> Amendment 253 will enable the Secretary of State to require a company to contribute towards the cost of building assessments carried out as part of this process.
>
> Amendment 256 makes a technical correction to secure that the maximum fine that can be imposed under the construction products regulations for an offence in Scotland is the statutory maximum in Scotland.
>
> Setting out this scheme in secondary legislation will enable the detailed design of these powers to interact with the construction products regulations, including those that will be made using the Bill's powers. Amendments 269, 270 and 273 are consequential to these amendments.[142]

Amendment 269 would ensure regulations under the new clauses relating to costs contribution orders were subject to the draft affirmative procedure. Amendment 270 would ensure the new Clauses relating to costs contribution orders extended to the whole of the United Kingdom. Amendment 273 provided for the new clauses relating to construction products to come into force two months after Royal Assent.[143]

Baroness Scott explained that under amendment 257, the affirmative procedure would be used to create regulations that would remove construction products from the list of "safety-critical products". She said:

> It is of course right that regulations receive the proper level of parliamentary scrutiny. That is why Amendment 257 will supplement the existing safeguards

[142] HL Deb 29 March 2022 c1555

[143] HL Bill 125-I, Marshalled list of amendments for Report, 25 March 2022

> in Schedule 12, which prevents products being added to the list unnecessarily or removed without good reason.
>
> Finally, Amendments 216 and 217 make a minor drafting change in relation to the definition of
>
> "persons carrying out activities in relation to construction products" in Clause 129.[144]

All amendments were agreed.[145]

Lord Khan of Burnley welcomed the group of amendments, particularly amendment 246, which he said "provides for a new right of action where breach of regulations relating to construction projects leads to a building or dwelling becoming unfit for habitation". He asked whether "the Minister could clarify whether the Homes (Fitness for Human Habitation) Act already provides for similar guarantees". Baroness Scott said that she would "write to the noble Lord on his question".[146]

The Government wrote to Lord Khan on 2 April 2022 clarifying that the "fit for habitation" test in the Government's amendments would be equivalent to the test used in the Defective Premises Act 1972, which relates to building construction. The Homes (Fitness for Human Habitation) Act 2018 is concerned with the quality of rented properties for occupation, rather than the construction of the building.

144 HL Deb 29 March 2022 c1555
145 HL Deb 29 March 2022 c1557, cc1576-80
146 HL Deb 29 March 2022 c1556

3 Non-Government amendments agreed on report

3.1 Regulator's two-year review of benefits and costs of safety measures

Lord Stunell and Baroness Pinnock proposed amendment 8, which would require the building safety regulator to publish an assessment of the "benefits and costs of measures on improving the safety of people in or about buildings", relating to **four areas**: fire suppression systems; safety of stairways and ramps; certification of electrical equipment; and systems and provision for people with disabilities.

The assessment would be published within two years of section 5 coming into force. The intention of the amendment was to "ensure that major issues of public concern about safety in buildings were addressed in a timely way".

Lord Stunell explained that his amendment contained the "catch-all" that the building safety regulator may "identify and give notice of such other matters relating to safety of people in or about buildings that they determine require further examination". He said:

> Here is an opportunity, with a clean slate and a new building safety regulator, to set out clearly in this Bill the four topics that need the most urgent attention. Let us hear what the building safety regulator has to say about it. If they come back and say that I am hopelessly exaggerating the concerns and problems so it is not necessary to regulate, let us hear it. However, if it is necessary to regulate, let us hear that as well.[147]

Lord Greenhalgh said the Government would not be accepting the amendment, saying clause 5 of the Bill "already places an existing duty on the regulator to keep safety and standards under review":

> Clause 5 places a broad horizon-scanning duty on the building safety regulator to keep the safety and standards of all buildings under continuous review. That will include keeping under review issues such as fire suppression systems, the safety of stairways and ramps, the certification of electrical equipment and systems and provision for people with disabilities.
>
> The regulator will work with the construction industry and technical experts, commission research, conduct consultations and make recommendations to the Government for improving regulations and guidance where required. The

147 HL Deb 29 March 2022 c1400

> building safety regulator will be required to report annually on the performance of its building functions, under changes that the Bill makes to the Health and Safety at Work etc Act 1974.
>
> The Bill also ensures that crucial aspects of the new system are included in the regulator's annual reporting—notably engagement with residents, under Clause 19, and mandatory occurrence reports, which can help industry to track safety issues, under Clause 20. Clause 3 further requires the regulator to have regard to the principles of transparency and accountability. The Government intend that the regulator's published strategic plan, required by Clause 17, will set out in further detail what it must report on. In the light of the regulator's duty under Clause 5 to keep the safety and standards of all buildings under continuous review, along with the strong reporting requirements already contained in the Bill, I believe that this amendment is not needed.[148]

Amendment 8 was voted on, and agreed to by 176 votes to 151.[149]

3.2 Extension of leasehold cost protections to buildings of all heights

As noted in section 2.4, amendment 115, to extend cost protections in the Bill to leaseholders in buildings of all heights containing two or more residential dwellings was agreed by 156 votes to 123.[150] Clause 116 (meaning of "relevant building") was amended to remove reference to 11 metres, five storeys, and other descriptions prescribed in regulations.

The Earl of Lytton (crossbench), who moved amendment 115, said: "A block of flats without adequate separating walls to me is just as dangerous above ground-floor level as a high-rise block without decent fire doors."[151] He was not persuaded by the Government's case for excluding lower rise blocks from protection saying: "There seems no good reason for height exclusion on any moral, economic, safety or practical ground."[152]

Lord Greenhalgh set out the Government's position:

> It is not necessary to extend the leaseholder protection provisions to lower-rise buildings. Leaseholder protections are needed in multi-occupied buildings above 11 metres as essential and costly remediation works may be needed in buildings of this height from which leaseholders need to be protected. On the other hand, there is no systemic fire safety risk in buildings below 11 metres. Low-rise buildings will not need costly remediation to make them safe. Lower-cost mitigations are likely to be more appropriate.
>
> I am aware of just a handful of low-rise buildings—as mentioned by my noble friend Lord Blencathra—where freeholders have been commissioning such

148 HL Deb 29 March 2022 c1405
149 HL Deb 29 March 2022 cc1427-9
150 HL Deb 29 March 2022 cc1535-7
151 HL Deb 29 March 2022 c1508
152 HL Deb 29 March 2022 c1508

> works. This is in the context of there being vastly more low-rise than medium and high-rise buildings. It is clear in this very small number of cases that many of the examples of buildings under 11 metres follow the recommendations of EWS1s undertaken prior to the July statement and prior to the withdrawal of the consolidated advice notice in January of this year, as well as the introduction of the publicly available specification 9980, which followed shortly thereafter. I am completely clear that freeholders and landlords should not be commissioning costly remediation works in buildings below 11 metres tall.[153]

The amendment was agreed by 156 votes to 123.

3.3 Protection where leaseholders have collectively enfranchised

On report, Lord Young (Con) pressed amendment 117 to a vote. He said it would "expand the service charge protections to enfranchised buildings and buildings where the right to manage has been exercised."[154]

Lord Young said to put enfranchised leaseholders in a worse position than those not enfranchised would be "perverse", drawing attention to clause 120:

> The Government cannot hope to succeed in encouraging more resident-owned and resident-run buildings unless they treat all buildings affected by fire safety issues equally. As I understand the legislation, once your building is "not relevant", it in effect becomes a second-class building in perpetuity.
>
> I have looked at the government amendments tabled since Committee stage but they seem to make the position worse by confirming that these buildings are excluded. That means that people living in these buildings are being left to fend for themselves, either by undertaking litigation or by recovering what they can from the building safety fund.[155]

Lord Greenhalgh responded:

> Our leaseholder protection measures work at a fundamental level by preventing building owners and landlords from passing on certain costs to leaseholders through the service charge and requiring building owners and landlords to pay instead. The leaseholder protections do not apply where buildings have been collectively enfranchised, as in these circumstances the building is owned by some or all of the leaseholders. We are therefore unable to apply the leaseholder protection provisions in these circumstances as there is no separate landlord or freeholder with whom costs can be shared.
>
> In essence, there is nothing in these amendments that increases liability for enfranchised leaseholders. Enfranchised buildings are of course eligible for the £5.1 billion building safety fund in the same way as other buildings. It is still our

153 HL Deb 29 March 2022 c1532

154 HL Deb 29 March 2022 c1509 – enfranchisement refers to the process of leaseholders individually or collectively buying the freehold interest or extending their lease agreements.

155 HL Deb 29 March 2022 cc1509-10

> expectation that the polluter will pay, and our expectation is that developers will pay to fix buildings that they had a role in developing or refurbishing. In addition, all the other legislative provisions will apply equally to collectively enfranchised buildings, including all measures and powers in the Bill to pursue developers and cladding manufacturers and compel them to pay.[156]

Lord Young's amendment was agreed to by 146 votes to 114.[157]

3.4 Removal of leaseholders' liability to pay for fire safety remediation works

As noted in section 2.4, in Grand Committee and on report Peers questioned the degree to which the Bill's contents fulfilled Michael Gove's commitment to provide leaseholders with statutory protection extending to all the work required to make buildings safe.[158]

Baroness Hayman of Ullock (Lab) moved amendment 155 on report to reduce the maximum amount leaseholders could be liable to pay for fire remediation works to zero.[159] Her amendment was agreed by 137 votes to 123.[160]

She set out the rationale for the amendment:

> It is really important that we take account of the principle that has been referred to by other noble Lords: there should be no cost to people who have done nothing wrong. It is not the fault of leaseholders that they have been left with these huge costs. We believe it is desperately unfair to force them to pay a penny, which is why my amendment has the word "zero" in it. As mentioned by the noble Baroness, Lady Pinnock, we must not forget the strain on the mental health of leaseholders. They need clear and proper support, and they are relying on your Lordships to do the right thing by them. To me, this is a moral question. Should leaseholders pay costs that, for many, will still be huge despite the caps proposed by the Government? They are blameless; they should pay nothing.[161]

Lord Greenhalgh defended the approach to leaseholder costs in some circumstances, when "other steps have been exhausted":

> The caps do not apply at all in relation to cladding defects, nor do they apply where the value of the flat is less than £175,000 outside Greater London and £325,000 inside.
>
> The caps only apply where the building owner or landlord is not linked to the developer and cannot afford to pay in full, where the developer cannot be made to fix their own building, and where the building owners have exhausted

156 HL Deb 29 March 2022 cc1532
157 HL Deb 29 March 2022 c1532
158 HL Deb 29 March 2022 c1470
159 HL Deb 29 March 2022 c1544
160 HL Deb 29 March 2022 cc1545-6
161 HL Deb 29 March 2022 c1530

> all reasonable steps to recover costs from third parties. Leaseholder contributions will only apply where there is no clear developer or wealthy landlord to meet the costs in full, and the party responsible for defective work cannot be identified. The Government consider that this will occur only in a minority of circumstances.
>
> Where there is no party that clearly should pay in full—and only then—our approach spreads the costs fairly and equitably across those with an interest in the building and ensures above all that the most vulnerable leaseholders are protected. The Government's latest amendments go even further in protecting leaseholders. Where the freeholder or landlord is not at fault and cannot pay to meet the costs, we need to ensure a proportionate approach that takes into account the interests of all parties. That is why our approach spreads the costs equitably among all relevant parties with an interest in the building.
>
> [...]
>
> Where there is no clear party that must pay, it would not achieve a fair balance between relevant parties to transfer the costs in full to the freeholder or landlord. I appreciate that that opinion seems to vary from that of noble Lord, Lord Marks of Henley-on-Thames, but that is the government position.[162]

Lord Marks of Henley-on-Thames explained in some detail the legal advice he'd received on whether extending protections for leaseholds would, as the Government contends, "probably breach a freeholder's right to the peaceful enjoyment of their property under Article 1 of Protocol 1 of the ECHR." He did not accept the Government's analysis.[163]

At third reading, Baroness Hayman moved "a tidying up amendment" to schedule 8 consequential on amendment 155. This amendment, which was agreed, would allow the Secretary of State to make regulations about the determination of the value of a qualifying lease.[164]

162 HL Deb 29 March 2022 c1529
163 HL Deb 29 March 2022 cc1521-3
164 HL Deb 4 April 2022 c1844

4 Other Government commitments

4.1 Permitted development

Permitted development rights are rights to make certain changes to a building without the need to apply for planning permission.

Lord Shipley considered that:

> it would be inappropriate [...] if a different set of rules were to apply to a conversion from office to residential than would apply to a residential block always designated as that. This amendment aims to clarify that the permitted development route cannot be used where it would be contrary to the provisions of this Act.[165]

Lord Best also raised concerns:

> An obvious case of building safety impacting on health and well-being is surely the permitted development rights regime. Submissions to the Oxford Commission on Creating Healthy Cities have revealed widespread condemnation of the appalling building standards allowed via permitted development rights, which permit conversions of commercial and industrial buildings into accommodation without the need for normal planning consents. This has led to the creation of some ghastly, substandard new slums often on non-residential business parks full of safety hazards, with no facilities, no play areas for children and danger from traffic. Research at University College London reveals that a very large proportion of the well over 100,000 homes delivered through these permitted development rights have been substandard.[166]

Lord Shipley proposed amendment 135, which would have added a new clause after clause 135:

> "**Permitted development**
>
> Nothing in the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596) permits development which would convert offices to residential accommodation if such development is contrary to the provisions of this Act."[167]

The Government said it would write to clarify whether the Bill would include the conversion of offices to dwellings. Lord Greenhalgh responded:

165 HL Deb 21 February 2022 c24GC
166 HL Deb 29 March 2022 c1398
167 HL Deb 21 February 2022 c24GC

> Essentially, they [the noble Lord, Lord Shipley, and the noble Baroness, Lady Pinnock] want an answer to this question: "If you take a non-residential building, whether it is an office block or a Yorkshire mill, and you create a residential dwelling, will that be in scope when it comes to a new build?" The start point does not matter—it is non-residential—so is it included? I will answer both noble Lords in writing and lay a copy in the Library.[168]

At the time of writing, the Government had not published a written response on this matter.

4.2 Staircase regulations

In Grand Committee on 2 March, Baroness Jolly discussed amendment 120, which would insert a new clause on "consultation on staircase regulations". This would require the Secretary of State to "consult on regulations requiring staircases in all new build properties to comply with British Standard 5395-1" within six months of the Act passing.[169] Baroness Finlay of Llandaff noted:

> As [Baroness Jolly] pointed out, more than 700 people die each year from falls on the stairs. But in addition to this, 43,000 people are admitted to hospital. Falls are tragic and common, but they do not often make the news. Someone is estimated to fall on stairs every 90 seconds, and falls on stairs account for a quarter of all falls in the home. Obviously, when stairs have an inadequate guardrail, the trauma sustained is even worse, as it is when they are a long flight of stairs.[170]

Lord Greenhalgh said the Government would look at updating existing building regulation (Approved Document K: Protection from falling, collision and impact) to include the standard. He said a proposal to do this would be discussed at a meeting of the Building Regulations Advisory Committee on 16 March. [171]

At report stage on 29 March, Baroness Jolly said that updating Approved Document K "to enshrine British Standard 5395-1 achieves the same aim as our amendment to the Building Safety Bill", therefore "we should be in a position to withdraw our amendment". However, she explained that "the most up-to-date British Standard for stair design, BS 5395-1, is associated with a 60% reduction in falls on stairs" and asked for assurance that "the process to make BS 5395-1 legally mandatory via building regulations will progress as quickly as possible and that, within 12 months at the very latest, it will be enshrined into law". [172]

Responding for the Government, Baroness Bloomfield said:

168 HL Deb 21 February 2022 c33GC
169 HL Deb 2 March 2022 c307GC
170 HL Deb 2 March 2022 c310GC
171 HL Deb 2 March 2022 c317GC
172 HL Deb 29 March 2022 c1434

> The Government have accepted the advice of the Building Regulations Advisory Committee and will now put in motion a review of approved document K, focusing primarily on section K1. This review will run in parallel with the review already under way of approved document M, which looks at accessibility. This review will consult on raising the safety of staircases to that achieved by meeting the British Standard on staircases, BS 5395-1. I reassure noble Lords that this will be done as expeditiously as possible and certainly within the year.[173]

[173] HL Deb 29 March 2022 c1461

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