House of Commons Library

By Ed Potton,
Wendy Wilson

17 January 2022

Building Safety Bill: committee stage

Summary
1 Background
2 Second reading
3 Public Bill Committee
4 Clause by clause scrutiny

Image Credits
Wendy Wilson

Feedback
Every effort is made to ensure that the information contained in these publicly available briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Please note that authors are not always able to engage in discussions with members of the public who express opinions about the content of our research, although we will carefully consider and correct any factual errors.

You can read our feedback and complaints policy and our editorial policy at commonslibrary.parliament.uk. If you have general questions about the work of the House of Commons email hcenquiries@parliament.uk.

Contents

Summary

The Building Safety Bill contains a series of reforms to building safety and is the main legislative response to the Grenfell Tower fire in 2017.

The Government established the Building Safety Programme and the Independent Review of Building Regulations and Fire Safety (the Hackitt Report) in response to the fire. Due to the Building Safety Programme, remediation work on cladding and other fire safety defects has been required across thousands of high-rise residential buildings in England. The Independent Review concluded a new system of regulation was required for the design, construction and occupation of high-rise residential buildings.

This Bill would make changes to building regulation and management and takes forward the Government's plans to implement the review, as well as other building-related measures.

What progress has the Bill made?

A draft Bill was published in July 2020. The Housing, Communities and Local Government Committee scrutinised its contents and reported in November 2020. The Government response to the Committee was published alongside the Bill on 5 July 2020. The Library briefing prepared for second reading gives an overview of the Bill: Building Safety Bill.

Second reading took place on 21 July 2022. The Bill's committee stage took place over 16 meetings starting on 9 September and concluding on 26 October 2021. Remaining stages will take place in the Commons on Wednesday 19 January. It will then move to the House of Lords.

When the Bill was introduced the Government said it expected the parliamentary process to take at least nine months.

Changes made at committee stage

Government amendments 6-8, 17, 18, 22-38, 41-56, 19-21 were agreed at committee stage. These were mostly technical provisions, and many related to the extension of specific provisions to Wales. One new Government clause was added to the Bill which would prevent higher risk buildings being occupied in phases when there was no completion certificate. This was needed due to the way the three 'gateways' during construction for new higher risk buildings, and introduced by the Bill, would work.

Amendments and new clauses were tabled by the Opposition and other members of the committee on a range of issues, but any debated were withdrawn at the end of the debate. Opposition amendment 16, which would have required the Housing Ombudsman to consult tenants as part of complaints made against social housing providers, went to a vote and was rejected.

A revised approach to funding remediation on 11-18 metre buildings

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. This included:

- Scrapping the proposed loan scheme for cladding remediation for 11 to18 metre residential buildings and instead funding cladding remediation work for these buildings from developer contributions.
- Promising further amendments to the Building Safety Bill to protect leaseholders from costs, forfeiture and eviction due to historic fire safety costs.
- Amendments to the Building Safety Bill to retrospectively extend the legal right of building owners and leaseholders to seek compensation from their building's developer for safety defects for a period of up to 30 years. The Bill currently provides for an extension of 15 years.

As part of the changes, the Secretary of State wrote to developers requesting the industry make financial contributions to support the revised plan, fund work on buildings they have played a part in developing and asked for relevant information they hold on buildings over 11 metres to be shared.

Finding information on amendments

The Bill page on parliament.uk has up to date information, including the latest amendments tabled for the remaining stages. The latest amendments at the date of publication includes several new clauses, a new schedule and other amendments tabled by the Government.

1 Background

The Building Safety Bill contains a series of reforms to building safety and is the main legislative response to the Grenfell Tower fire in 2017.

The Government established the Building Safety Programme and the Independent Review of Building Regulations and Fire Safety (the Hackitt Report) in response to the fire. Due to the Building Safety Programme, remediation work on cladding and other fire safety defects has been required across thousands of high-rise residential buildings in England. The Independent Review concluded a new system of regulation was required for the design, construction and occupation of high-rise residential buildings.

This Bill would make changes to building regulation and management and takes forward the Government's plans to implement the review, as well as other building-related measures.

A draft Bill was published in July 2020. The Housing, Communities and Local Government Committee scrutinised its contents and reported in November 2020. The Government response to the Committee was published alongside the Bill on 5 July 2020. The Library briefing prepared for second reading gives an overview of the Bill: Building Safety Bill.

Additional information on measures and secondary legislation

Since the Bill was published further information has been provided:

- Additional draft regulations covering provisions in the Bill: Building Safety Bill: draft regulations.
- Additional factsheets on provisions in the Bill: Building Safety Bill: factsheets.

Revised approach for 11 to 18 metre buildings

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. This included:

- Scrapping the proposed loan scheme for cladding remediation for 11-18 metre residential buildings and funding cladding remediation work for these buildings. The Government are seeking to fund this from developers and are expected to report back on progress before the Easter recess (31 March 2022).

- Promising further amendments to the Building Safety Bill to protect leaseholders from costs, forfeiture and eviction due to historic fire safety costs.
- Amendments to the Building Safety Bill to retrospectively extend the legal right of building owners and leaseholders to seek compensation from their building's developer for safety defects for a period of up to 30 years. The Bill currently provides for an extension of 15 years.
- Withdrawal of the Consolidated Advice Note with replacement by updated guidance, produced by the British Standard Institution, to help fire risk assessors take a proportionate approach to the assessment of walls and avoid wholescale cladding replacement where it is safe to do so.

As part of the changes the Secretary of State wrote to developers and asked them to:

- make financial contributions to a dedicated fund to cover the full outstanding cost to remediate unsafe cladding on 11-18 metre buildings, currently estimated to be £4 billion
- fund and undertake all necessary remediation of buildings over 11 metres that they have played a role in developing
- provide comprehensive information on all buildings over 11 metres which have historic safety defects and which they have played a part in constructing in the last 30 years.

2 Second reading

Second reading of the Bill took place on 21 July 2021. The debate was opened by the then Secretary of State for Housing, Communities and Local Government, Robert Jenrick, who outlined the key parts of the Bill and noted he had also made a Written Statement to the House providing an update on remediation work, including fire safety advice for residential properties below 18 metres.[1]

During the debate, the timing of the written statement was criticised, including by the then Shadow Secretary of State for Housing, Lucy Powell. She said the opposition supported "the majority of what is in this Bill" but had "serious concern about what is not in the Bill."[2] The concerns she raised included:

- Support for leaseholders where unfunded building safety remediation work is required;
- The "arbitrary definition of high-risk buildings";
- A lack of transparency in the testing regime for construction products in the proposals;
- That this Bill has "limited mechanisms to recoup costs from developers";
- Whether new homes and social housing ombudsmen would have "real teeth".[3]

Patricia Gibson, for the SNP, noted while parts 1 to 4 of the Bill applied to England and Wales, part 5 had UK-wide provisions. She welcomed the provisions around ombudsmen and welcomed a UK-wide approach where relevant, but asked for genuine "consent and engagement" with the Scottish Government and that it should not be a "box-ticking exercise."[4]

Daisy Cooper (Lib Dem) welcomed the proposed Building Safety Regulator and the role of the accountable person, but questioned the 18 metre definition of high risk buildings and said the Government needed to provide greater funding for remediation work.[5]

The Bill was agreed to without division and was committed to a Public Bill Committee.

1 HCWS228 21 July 2021
2 HC Deb 21 July 2021 c1030
3 HC Deb 21 July 2021 c1030-2
4 HC Deb 21 July 2021 c1036
5 HC Deb 21 July 2021 c1051

3 Public Bill Committee

The Bill's committee stage took place over 16 meetings starting on 9 September and concluding on 26 October 2021. Oral evidence was taken over the first four sessions on 9 and 14 September 2021.

Government amendments 6-8, 17, 18, 22-38, 41-56, 19-21 were agreed at committee stage. These were mostly technical provisions, and many related to the extension of specific provisions to Wales. One new Government clause was added to the Bill which would prevent higher risk buildings being occupied in phases when there was no completion certificate. This was needed due to the way the three 'gateways' during construction for new higher risk buildings, and introduced by the Bill, would work.

Amendments and new clauses were tabled by the Opposition and other members of the committee on a range of issues, but any debated were withdrawn at the end of the debate. Opposition amendment 16, which would have required the Housing Ombudsman to consult tenants as part of complaints made against social housing providers, went to a vote and was rejected.

A record of what happened to each clause, schedule, amendment, and new clause considered at committee stage is set out in a document published on the Bill pages of the Parliament website.[6] Transcripts of the committee stage debates are also available.

The Public Bill Committee was chaired by Philip Davies, Peter Dowd, Clive Efford and Maria Miller. It comprised ten Conservative MPs, six Labour MPs, and one Liberal Democrat MP. Its membership was as follows:

- Mike Amesbury (Lab)
- Shaun Bailey (Con)
- Siobhan Baillie (Con)
- Ian Byrne (Lab)
- Ruth Cadbury (Lab)
- Theo Clarke (Con)
- Brendan Clarke-Smith (Con)
- Daisy Cooper (Lib Dem)
- Rachel Hopkins (Lab)
- Eddie Hughes (Con)
- Mark Logan (Con)
- Scott Mann (Con)
- Kate Osborne (Lab)

6 Building Safety Bill (Committee Stage Decisions)

- Christopher Pincher (Con)
- Marie Rimmer (Lab)
- Selaine Saxby (Con)
- Jacob Young (Con)

The following section of the paper provides commentary on key parts of the debate on the clauses and highlighted the changes made.

4 Clause by clause scrutiny

4.1 The building safety regulator (clauses 2-29)

Creation and objectives of the regulator

Part 2 of the Bill establishes the Building Safety Regulator within the Health and Safety Executive (HSE).

In the debate on clause 2 (and schedule 1), the introduction of the regulator was welcomed across the House, although opposition Members criticised the scope of the Bill. Mike Amesbury (Lab), the Shadow Minister for Housing, told the Committee:

> ...Our fundamental concern is not necessarily with what is in the Bill; it is with what is not. Seventeen times—18 if we include a recent promise by the Prime Minister—Ministers have stated that leaseholders will be protected from historical remediation costs. When we look at the Bill line by line and clause by clause, we see that the evidence is that that simply is not the case.[7]

Mr Amesbury asked the Government for more information on how the resident's voice would be reflected in the new regulator:

> Moving on to the fundamental details of clause 2, many witnesses, including the general secretary of the Fire Brigades Union, Matt Wrack, welcomed the new building regulator and spoke of the constructive working relationship with the Health and Safety Executive, reaffirming the Minister's statement and the evidence from other witnesses about the appropriateness of HSE. Other witnesses, such as Martin Boyd from the Leasehold Knowledge Partnership, spoke of the need to capture the residents' voice, from the grassroots to the highest table of the new regulator, to help to establish and change that culture, and to improve the competence referred to in future clauses. Given the commitment highlighted in the previous social housing White Paper, for example, I am interested in the Minister's thoughts about the residents' voice.[8]

Mr Amesbury and others raised a query about whether the HSE had the resources needed to carry out their new responsibilities. In response, the Minister for Housing, Christopher Pincher, said additional funding had been made available for the HSE, adding:

7 PBC 16 September 2021 c156
8 PBC 16 September 2021 c157

> ...Certainly, the funding of HSE is, as always, subject to discussions with the Treasury in the spending review, and I am sure we will hear more about that—to the benefit of HSE—in due course.[9]

The Minister also commented on how the HSE was seeking to engage with residents, adding:

> Sarah Albon [Chief Executive of the HSE] made clear in her evidence to the Committee last week that HSE is reaching out—to use that modern phrase—to stakeholders, including residents and dwellers of high-rise buildings, to ensure that their voices and concerns are heard.[10]

Clause 2 was agreed to stand part.

The Objectives and 'Regulatory Principles' of the Regulator are established in clause 3 of the Bill. On clause 3, the Opposition moved amendment 11 which would require the building safety regulator to mitigate for risk relating to climate change. Mike Amesbury highlighted a report from the Climate Change Committee in 2019 setting out the challenges for housing from climate change, including adapting current housing stock for higher temperatures, flooding and water scarcity. Mr Amesbury said:

> Modern high-rise flats are disproportionately at risk of overheating due to lack of protection from the sun and lack of ventilation in many cases. As a result, deaths caused by overheating could triple over the next 30 years if we do not reduce the risk. This is about people and about building safety beyond fire safety. At the other end of the spectrum, cold deaths are also predicted to remain high, but we could reduce them by better insulating homes.
>
> It is not just high-rise flats that are at risk from the effects of climate change; 1.8 million people now live in areas at risk of flooding. That could double by 2080, but we are simply not seeing the resilience measures that we need to be built into the framework. In mentioning flooding, I am not talking about eighth-floor flats, yet there is a clearly a huge risk. Many constituencies and constituents regularly face the threat of flooding. This summer has seen huge flooding that has killed hundreds of people across western Europe. This is another example of how we must look beyond the narrow definition of the present risk and of building safety.
>
> Last year, the chair of the Climate Change Committee's Adaptation Committee, Baroness Brown, wrote to Dame Judith Hackitt as chair of the board overseeing the establishment of the Building Safety Regulator. In the letter, she stated:
>
> "The current building safety works programme must be broadened beyond its current focus on fire safety to include the risk of addressing climate change."
>
> We are in a climate emergency. Amendment 11 would put that very commitment on the face of the regulator's objectives. I urge the Minister to consider the amendment."[11]

9 PBC 16 September 2021 c161

10 Ibid.

11 PBC 16 September 2021 c162

The Minister indicated the Government could not accept the amendment, saying the Bill already had relevant powers that could be used:

> I can assure the Committee that the objectives of the Building Safety Regulator and its functions already give the regulator the remit it needs to focus on ensuring that our building regulatory regime takes the appropriate steps to mitigate the effects of climate change. The existing statutory objective around securing safety would cover safety issues resulting from climate change, including risks of overheating. I also draw the Committee's attention to the regulator's objective to improve the standard of buildings. Standards are defined broadly by clause 29, which we shall come to in due course.
>
> Standards will include all the matters that can be dealt with by the building regulations. Section 1 to the Building Act 1984 ensures that building regulations can cover sustainable development, the protection or enhancement of the environment, and furthering the conservation of fuel and power. Paragraph 8(5A) of schedule 1 to the Building Act also allows for building regulations to cover flood resistance and flood resilience.
>
> The Building Safety Regulator will be under a duty, under clause 5, to keep the safety and standards of buildings under review, including safety issues relating to the building, such as overheating or flooding. The regulator will be able to recommend to Ministers or to industry changes needed to buildings and building standards to mitigate those issues. Therefore, the regulator will already have an important remit to provide independent advice to Ministers and industry on ensuring that building standards are appropriate and mitigate the effects of climate change.[12]

The Minister also highlighted that this was an issue covered in other areas of Government policy – such as the forthcoming Future Homes Standard, as well as in planning law (in particular for flooding) and actions by the Environment Agency and DEFRA.[13] Mr Amesbury withdrew the amendment.

Mr Amesbury also moved amendment 10 which sought to define 'safety' in clause 3. This was debated alongside during the clause stand part debate. The amendment linked safety to overall health and wellbeing:

> ...'safety' means risk of harm arising from the location, construction or operation of buildings which may injure the health and wellbeing of the individual.

Members across the Committee agreed with the sentiment of the amendment, but questioned whether it was needed. For example, Shaun Bailey (Con) argued sufficient provision was given in clause 5, while Siobhan Baillie (Con) cautioned against being 'too prescriptive' to the regulator. However, Ruth Bailey (Lab) argued the amendment was important in ensuring buildings and their related safety issues came in scope of the regulator.

The Minister argued the amendment was unnecessary, stating:

---

12 PBC 16 September 2021 c169-170

13 PBC 16 September 2021 c171-2

> The existing objectives of the Building Safety Regulator are broad enough to cover the key aspects of wellbeing and safety. Further, the proposed change could have the unintended effect of undermining the focus of the Building Safety Regulator on preventing another tragedy like Grenfell—a goal I am sure the whole Committee shares.
>
> On wellbeing, I draw the Committee's attention to the regulator's objective to improve the standard of buildings. This is a broad objective and it sits alongside a crucial new oversight function which we will consider in greater detail when we reach clause 5, as I said to the hon. Member for St Albans. The oversight role means that the Building Safety Regulator will monitor the safety and standards of buildings and make recommendations to Ministers and to industry on changes to building standards.
>
> Building standards are defined broadly in the Bill and would include building regulations. Section 1 of the Building Act 1984 allows building regulations to address "welfare and convenience" as well as health and safety, so the Building Safety Regulator can already consider issues such as access, damp—an issue raised by the hon. Member for Weaver Vale—and heating, which affect welfare and go beyond simple physical safety.
>
> I further reassure the Committee that the Building Safety Regulator's objective on safety already covers all types of risks to safety that flow from the building, whether they relate to its location, construction or management. Therefore, the amendment is not necessary to ensure that the regulator's objectives cover building standards relevant to wellbeing, and safety issues resulting from a whole range of matters linked to the building are already properly covered. The amendment could also have unfortunate unintended consequences by seeking to redefine safety to include wellbeing.[14]

The Minister also argued the amendment may cause confusion with other clauses in the Bill. The amendment was withdrawn and the clause was ordered to stand part.

Duties of the regulator

Clauses 4 to 6 of the Bill establish three broad duties, and examples of their use are given in the explanatory notes (pages 30-32, 2.3MB, PDF).[15] The duties are:

- A duty to facilitate building safety in higher risk buildings, by providing assistance and encouragement to relevant persons (who are defined in the Bill).
- A duty to keep safety and standards of buildings under review.
- A requirement to facilitate improvement in industry competence and building inspectors by providing assistance and encouragement to persons in the built environment industry and registered building inspectors.

The Government moved amendment 6 to make a minor and technical amendment to add owners of residential units as 'relevant persons' for this

14 PBC 16 September 2021 c177-8

15 Bill 139 EN 2021-22, p30-32

part of the Bill. Clauses 4 to 6 of the Bill were ordered to stand part with no further amendments. In the debate on clause 5, Mike Amesbury (Lab) asked what duty there was to consult with Parliamentarians under the duty to keep the safety and standards of buildings under review. The Minister said there were several standard ways for Parliament to scrutinise the Executive, and Parliament would need, if felt necessary, to find a way of engaging with the Regulator.[16] On the debate on clause 6, Labour Members raised concerns heard in evidence around the involvement of private inspectors for buildings under 18m.[17]

Committees and Panels

Clauses 9 to 11 establish the Building Advisory Committee, the Committee on Industry Competence and Residents' Panel. Clause 12 is a related regulation making power to amend or repeal these provisions. Clauses 9 to 12 were considered together and were broadly supported by the Opposition. Christopher Pincher, Minister for Housing, provided more detail on how the residents' panel may work:

> Clause 11 is a vital step to ensuring that residents are able to have their voices heard and to influence policy at the national level. It mandates that the Building Safety Regulator must establish a residents' panel. It is crucial that the residents' panel brings the lived experience of residents into the heart of the regulator. That message came through quite clearly in the witness session evidence we heard in the last two sittings.
>
> The Bill therefore requires that the residents' panel must contain actual residents of high-rise residential buildings. The panel may also include organisations that support and represent residents, and owners of flats in high-rise residential buildings who may not live there at the time. The Building Safety Regulator will be able to seek the advice and support of the residents' panel on a wide range of issues.
>
> The Bill also requires that the residents' panel must be consulted on matters that are likely to be of particular importance to residents of high-rise residential buildings. Specifically, the residents' panel must be consulted on the Building Safety Regulator's strategic plan and its system for handling residents' complaints, and on crucial guidance relating to residents' engagement, rights and obligations.[18]

He further commented on the make-up of the panel and plans for an interim panel:

> ...The Health and Safety Executive recognises the importance of resident engagement—as we heard in Sarah Albon's evidence a week ago today—and the challenge involved in ensuring a diverse membership that secures resident confidence, which is the point my hon. Friend just made. The Health and Safety Executive has already brought together a group, including residents, to plan for and advise on the setting up of the residents' panel. Building on that, the Health and Safety Executive intends to bring together a residents' panel on an

16 PBC 16 September 2021 c186
17 PBC 16 September 2021 c187-8
18 PBC 16 September 2021 c195-6

> interim basis ahead of legislation, so that it can benefit from residents' advice on its shadow Building Safety Regulator work.[19]

Mike Amesbury (Lab) asked the Minister to clarify who would make-up the Building Advisory Committee (clause 9) and the residents' panel (clause 11), and raised a concern about the "large amount of power" in clause 12. In response, the Minister noted changes to the Committee (by regulations made under clause 12) would require the affirmative procedure, while the make-up of the Committee would be down to the Regulator:

> With respect to clause 9, he asked who would form the building advisory committee. That committee will be appointed by the Building Safety Regulator itself. It will be formed of independent and impartial players, so it will not be a group of hand-picked ministerial appointments.
>
> I am very grateful to the hon. Gentleman for his support for clause 10. He asked who will form the residents' panel. As I said earlier, we want to ensure that that panel is as wide a representation of dwellers in high-rise properties as it can be, and we will work closely with the Building Safety Regulator and HSE to make sure that a wide variety of panel members is included. I am sure the hon. Gentleman will accept that I am not going to specify now exactly how they are to be found, because we have to work that through, but we already have a regulator in shadow form working with residents. We will make sure that that work flows through into the real world of the Building Safety Regulator and its advisory committees.[20]

The clauses were ordered to stand part.

Assistance from other bodies

Clauses 13-16 of the Bill deal with assistance given to the regulator from other bodies in the regulation of higher risk buildings. These clauses were considered together in Committee. In debate, the Minister gave a wide-ranging explanation of how cooperation with other bodies would work and governance.

Mike Amesbury (Lab), welcomed the clauses, noting they were supported by witnesses to the Committee, but asked whether appropriate funding would be available to those working with the Regulator, and asked for comment on concerns about the creation of a 'two-tier' system of building regulation.[21] The Minister, Christopher Pincher, noted in response:

> ...The hon. Gentleman asks about the consideration of buildings below 18 metres. He will know that the scope of the Bill is focused primarily on buildings that are taller than 18 metres or seven storeys and have more than two dwelling places. We have taken that decision based on advice and guidance, and because we want to focus our efforts and the efforts of the Building Safety Regulator on those buildings that are most at risk. That is not to say that in years to come the role and scope of the Building Safety Regulator cannot and will not change—I have outlined that in my previous remarks—but we are

19 PBC 16 September 2021 c196
20 PBC 16 September 2021 c199
21 PBC 16 September 2021 c204-5

> focused here on the safety from fire or structural risk of buildings primarily over that height and with those characteristics.
>
> The hon. Gentleman also asks about resourcing. Resourcing is always a matter for the spending review and discussions between Departments and the Treasury. We want to make it clear that we believe one of the financing mechanisms for this important work is through Government grant—that is why I have said so to the Committee, and I will continue to say so through the course of the debate on the Bill—but we also want to make sure that the regulator is able to charge sensible fees to ensure that fire and rescue services and local government are able to obtain sensible remuneration for the efforts that they employ, working with the Building Safety Regulator.[22]

The clauses were agreed to stand part without amendment.

Reporting

Clauses 17-20 deal with reporting requirements for the Building Safety Regulator, including the setting of a strategic plan and an annual statement (which could be the annual report). The opposition supported the clauses but asked about engagement and the strategic plan. The Minister indicated, because of reporting requirements, it was expected the Regulator would engage at different 'checkpoints' which would allow Parliamentary scrutiny. The clauses were ordered to stand part.[23]

Enforcement and decisions

Clause 21 allows the Building Safety Regulator to authorise individuals to exercise powers on its behalf, while clause 22 and schedule 2 deal with enforcement. The clauses were supported in Committee. In response to questions, the Minister said those authorised under the clause would have sufficient training as the Government had worked closely with the HSE "to identify appropriate training arrangements for authorised officers."

During the debate, some Members said the level of fines (level 3, a maximum of £1,000) might not be severe enough in the long run.[24] The clauses were agreed to stand part without amendment, along with clause 23.

Clauses 24 and 25 deal with the ability to review and appeal the Regulator's decisions. During the debate the Minister gave an example of how disputes might be managed:

> ...Relevant duty holders may have submitted a full gateway-2 application with all its constituent parts. The Building Safety Regulator, however, finds some of these documents to be not compliant, so does not approve the application to enable construction to begin. The developer then lodges an appeal—an internal review—against the Building Safety Regulator's decision within the period prescribed. The BSR then decides the most appropriate form of review and how comprehensive the review will be. If the developer is not content with

22 PBC 16 September 2021 c205

23 PBC 16 September 2021 c208-9

24 PBC 21 September 2021 c217-9

> the final decision of the regulator, they can appeal that decision to the first-tier tribunal. I might add that this clause is intended for certain types of regulatory decisions, such as the example of the refusal of a gateway application, but it does not include enforcement decisions, which will be appealable directly to the tribunal. The clause reflects our intention that, where disputes occur in relation to regulatory decisions, we want them to be resolved as rapidly as possible for all parties involved.[25]

In response to questions, the Minister indicated the Government wanted the process to be as quick as possible, and that because detail would be in secondary legislation, it allowed flexibility in establishing the system. When asked about the speed of the process he said the tribunal is a 'busy organisation" so the use of dispute resolution with the Regulator initially was important.[26] The clauses were agreed to stand part.

Fees and costs

Clause 27 allows for the Secretary of State to make regulations to enable the regulator to charge fees or recover costs relating to their functions. The Government introduced technical amendments 7 and 8 which clarified that the Building Safety Regulator could make charges as well as levy fees. In the debate on the amendments and the clause more generally, concerns were raised about the potential impact of charges being passed through to leaseholders. The Minister said they would likely form a small part of the building safety charge (see clause 120), and "…the Bill ensures that fees associated with breaches of the new regime can never be passed on to leaseholders."[27] Amendments 7 and 8 were agreed to and the clause was ordered to stand part.

4.2 Building Regulation and Control Reform (clauses 30-56)

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.

25 PBC 21 September 2021 c221
26 PBC 21 September 2021 c221-3
27 PBC 21 September 2021 c235

Defining a higher risk building and powers for the Regulator

Clause 30 inserts new parts into section 120 of the Building Act 1984 to allow for the definition of a higher-risk building. The drafting and power of these are similar, but not identical to that used for clause 62 of this Bill.

For this part, the Bill defines a higher-risk building will be one that is at least 18m or has at least seven storeys. At Committee stage the Government proposed a series of technical amendments (17, 36 and 37) to clause 30 which would provide Welsh Ministers with similar powers to define higher-risk buildings as already in the Bill for England. These amendments were agreed to without debate.[28]

In the stand part debate the threshold set in the Bill of 18m was debated, with the Government highlighting it was below the 30m recommended by the Hackitt report, and there was an ability in the Bill to expand the scope. The opposition noted buildings such as care homes and hospitals were not in scope and asked how the Building Safety Regulator might assess a change in risk to buildings not in scope. The Minister, Christopher Pincher, noted in conclusion:

> I will close by restating the key function of clause 30, which is to provide a definition for which buildings will be considered higher risk and, therefore, which buildings will be subject to the design and construction portion of our new and more stringent regulatory regime. Importantly, it also provides for what must be done if a decision is taken to alter that definition in the future—that very clear, staged process, which will ensure that proper tests, proper consultation and proper cost-benefit analysis are undertaken in order to deliver an expanded regime, if that is required.[29]

In the debate on clause 32, which amends the powers available for the Regulator to amend building regulations, including the creation of gateways, the Minister provided detail on the measures included in the Bill. In debate, it was noted much of the detail of the changes to the building control process would be in secondary legislation, and this would need to be "examine[d] in detail".[30]

Competence

Clause 34, which deals with Industry Competence, was welcomed by the Committee, with the Minister explaining how the Government intended to use the regulation making powers:

> We intend to use this power to impose in building regulations a general duty on anyone doing design or building work to have the appropriate competence to do their job in a way that ensures compliance with building regulations. Building regulations may also impose duties on those appointing the principal

28 PBC 21 September 2021 c243
29 PBC 21 September 2021 c247
30 PBC 21 September 2021 c252

> designer, the principal contractor and any other person, to ensure that those whom they appoint meet the competence requirements.[31]

The debate focussed on how to define competency and the role of training and skills bodies. The Minister highlighted the standards they are sponsoring with the BSI (British Standards Institution) for work on higher-risk buildings.[32] The clause was ordered to stand part without amendment.

Clause 36 was debated by the Committee and supported by the Opposition. The clause would allow building control applications to be referred to the Secretary of State (or Welsh Minsters) if it is not determined in a period prescribed by regulation. The Minister said he expected this power to be used 'infrequently' and it was ordered to stand part of the bill.[33]

Compliance and enforcement

Clause 37 introduces new compliance and stop notices to support enforcement action across all buildings in England and Wales. The clause was unamended in Committee and supported by the Opposition.

In debate, Mike Amesbury (Lab) asked about application to buildings below 18m and the ability to identify compliant products. Shaun Bailey (Con) raised the issue of consumers who buy a property pre-completion. The Minister clarified the clause applied to all buildings and said product standards were dealt with later in the Bill; he also noted consultation with stakeholders was underway to ensure the relevant secondary legislation was effective and the industry was well-informed.[34]

Reform of the Building Control Profession

The Bill reforms the system of building inspection in England and Wales, creating new roles within the system. Clause 41 amends the Building Act 1984 and inserts a new Part 2A providing for the registration of building inspectors and building control approvers by the Regulator.

The Government moved a group of amendments to clause 41 at Committee stage (amendments 18 and 23-34). The Minister, Christopher Pincher, explained the amendments, setting out how they dealt with duties to co-operate and information-sharing powers between Welsh Ministers, fire and rescue authorities and fire inspectors. They were considered technical and supported by the Opposition.[35] During the stand part debate, the Minister outlined how the clause would regulate the building control sector:

> Clause 41 establishes a new registration and oversight regime to provide consistency across the public and private sector, and creates a new, unified

31 PBC 21 September 2021 c259
32 PBC 21 September 2021 c259-65
33 PBC 23 September 2021 c273
34 PBC 23 September 2021 c275-8
35 PBC 23 September 2021 c285-6

> building control profession. The new registration regime will raise standards in the sector and enhance public confidence by requiring a minimum level of demonstrated competence to provide building control services on different types of buildings. For the first time, individual building control professionals, whether in the public or private sector, will have to register with a regulatory authority. That is the Building Safety Regulator in England and the Welsh Ministers in Wales.
>
> We intend for the registration process to involve the demonstration of competence against a shared framework. Registered professionals, who will be called "registered building inspectors", will need to adhere to a common code of conduct. We will now be able to hold individuals accountable for professional misconduct or incompetence. That is the foundation for clause 43, in which we set out certain activities and functions that building control bodies can carry out only by using a registered inspector.
>
> Together, these clauses will change the way building inspectors work with and for building control bodies, giving the consumer greater assurance that an experienced professional will be checking their building against regulations. We are introducing an updated registration regime for private sector building control bodies, currently known as approved inspectors. They will have to register with the regulatory authority to work as a registered building control approver and will be held to professional conduct rules. We are introducing sanctions and offences for misconduct to ensure that those organisations that supervise building works are held to high professional standards.[36]

In debate, Mike Amesbury (Lab), speaking for the Opposition, supported the clause but asked how a two-track approach to standards (relating to buildings under and over 18m) would be avoided. Shaun Bailey (Con) asked how having two new bodies to regulate building control professionals (the Building Safety Regulator and Welsh Ministers) would work. The Minister covered both issues in his response:

> ...I assure him that in our discussions with Ministers in Wales, with other Departments and with the Health and Safety Executive we are exploring appropriate transitional arrangements to ensure that the building control sector moves smoothly and safely from one uneven playing field to a more even one, in an orderly way, as I said.
>
> The hon. Member for Weaver Vale asked about the new registration regime. In the clause, we are attempting to create the oversight and the regime that will provide consistency across the public and private sectors, creating a new unified building control profession for all buildings in the sector. The new regime will not only raise standards in the sector, but enhance public confidence by requiring a minimum level of demonstrated competence to provide building control services on different types of buildings. One can imagine that with a high-rise, higher-risk building, the competence levels that the Building Safety Regulator requires could be higher than or different from those for other buildings. We might come to that in later clauses.[37]

The clause was ordered to stand part of the Bill.

---

36 PBC 23 September 2021 c287

37 PBC 23 September 2021 c289

Clause 45 of the Bill would provide the Secretary of State with a new power in England to transfer the building control functions of a failing local authority to another one. In debate, the Minister explained how the change was important in improving competence in building control teams.

Mike Amesbury (Lab) asked what checks and balances were in place "regardless of the political complexion of the Secretary of State". Christopher Pincher said there exists a current power for the Secretary of State to take control of a local authority building control function, but this change provided "greater discretion to transfer to another appropriate local authority the authority to discharge those functions on behalf of the failing local authority while it is brought back into competence".[38] The clause was ordered to stand part without amendment.

Insurance for building control professionals

An issue in the building sector since the Grenfell fire has been the availability of insurance for building control professionals. As the Minister set out in debate on clause 47:

> The Bill makes two main changes to reform and address that situation while keeping the fundamental requirement for insurance for approved inspectors. The first is a duty to prepare and publish guidance on what is adequate insurance cover. The second is the ability for the Secretary of State to designate bodies to undertake the functions both of joined-up guidance and of approving insurance schemes.[39]

While the clause was ordered to stand part and not opposed or amended, several issues were raised. These included raising previous comments by the Association of British Insurers (ABI) and insurance companies on the Bill about using "modern methods of construction", the level of detail left to secondary legislation, the availability and affordability for cover relating to fire safety works and concern over the definition of an accountable person and the building safety manager roles, and how that impacts obtaining professional indemnity insurance.[40] In response, the Minister outlined the Government was engaging with the insurance sector:

> ...I can assure the Committee that my noble Friend Lord Greenhalgh has held a series of discussions with the insurance sector over the last year. Indeed, today he began a series of much more detailed bilateral discussions with the sector to make sure that the insurance provision is appropriate and available.[41]

The Minister also said planned guidance on roles would help the insurance sector, and Government support was being provided for EWS1[42] related insurance:

38 PBC 23 September 2021 c295

39 PBC 23 September 2021 c295

40 PBC 23 September 2021 c296-9

41 PBC 23 September 2021 c300

42 External Wall System form used to assess residential properties for fire safety risk.

> I turn to the compelling contribution by the hon. Member for Brentford and Isleworth. I recognise that she raised some questions about the relative roles and responsibilities of the accountable person versus the responsible person, and the way in which the Regulatory Reform (Fire Safety) Order 2005, the Fire Safety Act 2021 and this Bill, when it becomes an Act, will operate. We will certainly ensure, though guidance, that those understandings are clear. That is one of the reasons why, for example, we have specified that where there are potentially multiple accountable persons, there will be a principal accountable person. That should, I hope, give the insurance sector and other players in the market some clear direction and guidance as to who is responsible for what, and their relative responsibilities.
>
> The hon. Lady also mentioned the difficulties with risk assessors, for example, getting assurance and insurance. We recognise that. One might say that the insurance sector has been rather sclerotic, but that is one of the reasons why we have worked closely with it, and one of the reasons why my right hon. Friend the Member for Newark (Robert Jenrick) made it clear when he was Secretary of State that we will provide for public indemnity insurance for EWS1 a Government-backed backstop where the market is not able to provide insurance for those inspectors that require it.[43]

Reforms to initial notice procedures

The Bill makes reforms to the 'Initial Notice' procedure. Where an approved inspector is used in the building regulation process, an 'initial notice' is issued to the local authority before work commences which registers the use of the Approved Inspector. Clause 48 will require a 'plans certificate' to be issued by a registered building control approver.

In debate the Minister, Christopher Pincher, clarified that while the change would help the process follow that usually used by a local authority building control team, it would be 'disproportionate' to expect the rule to be applied to small-scale building work (and therefore it is not mandated for all building work).[44] In the stand part debate on clause 51 and 52, which would require information sharing and a new electronic national portal for initial notices, the Minister provided information on the creation of this portal:

> ...we will work closely with the Building Safety Regulator to determine how a national portal will be established and maintained. We will bring forward further information in due course; we are working closely with the shadow regulator, and will inform the House when we have more information about how the portal will operate.[45]

In the stand part debate on clause 53 the Minister was asked by Ruth Cadbury (Lab) about how the overall provisions on building control would impact local authorities who share functions, and whether the Bill adequately dealt with this challenge. The Minister argued it did:

> As we know, local authorities share services and a variety of functions, some of which are statutory. They are able to share those functions across geographies

43 PBC 23 September 2021 c300-1
44 PBC 23 September 2021 c301-2
45 PBC 23 September 2021 c305

> and still execute their statutory responsibilities, and I do not foresee any issue here. She is quite right to say that smaller authorities often have challenges with resources that do a multiplicity of things. One of the reasons why we want in the Bill to see the development of multidisciplinary teams—the Building Safety Regulator and its functions, fire and rescue services, local authorities — is to ensure that even smaller authorities that have in-scope buildings are able to use those multidisciplinary teams to do the work that the Building Safety Regulator will require of them.[46]

A series of technical amendments were made to the Bill to provide for its application in Wales. Amendments 20 and 21 dealt with commencement provisions for Wales and amended clause 146. Amendment 22 clarifies the powers of the Counsel General to the Welsh Government in relation to enforcement action under the 1984 Act. Amendments 23 to 28 make minor consequential amendments to schedule 5 relating to Wales.

4.3 Levy on applications for building control approval in respect of higher risk buildings (clause 57)

Clause 57 will amend the Building Safety Act 1984 to give the Secretary of State power to impose a new levy "that will contribute to the government's costs of remediating building safety defects."[47]

Rachel Hopkins (Lab) moved amendment 9 to clause 57 which sought to exempt social housing from the levy. Speaking to the amendment, she said:

> ...the levy, if imposed on councils and social landlords, will increase the cost of building or refurbishing social housing, or increase the rents, yet the benefits to funds will not available to the tenants who would otherwise have benefited from lower rents or better housing.
>
> Finally imposing the levy on councils means council tenants will be subsidising the failings of private developers and paying the costs of both remediating council housing and private housing.[48]

Christopher Pincher, responding, confirmed an exemption from the levy for affordable housing "as a whole."[49] He said applying a levy to affordable housing, including social housing, "is likely to be a disincentive to supply."[50] He referred to ongoing consultation on the exemption (closed 15 October 2021) and said the preferred approach would be to include it in secondary legislation rather than on the face of the Bill.

46 PBC 23 September 2021 c306
47 HC Deb 10 February 2021 cc329-48
48 PBC 23 September 2021 c315
49 PBC 23 September 2021 c316
50 PBC 23 September 2021 c316

Rachel Hopkins withdrew the amendment on the basis of the Minster's assurances. The clause, as introduced, was ordered to stand part of the Bill.[51]

4.4 Occupation of higher-risk buildings (clauses 58-123)

A key objective of the Bill is to create a Regulator for high rise residential buildings covering the design, construction and occupation of the building – managing a building through its lifetime. This section of the Bill sets out the process for the Building Safety Regulator to oversee the occupation of these buildings and the roles and responsibilities of key duty-holders and residents.

Defining a higher risk building

Clauses 59-71 of the Bill make key definitions around the higher risk building regime. An Opposition amendment (12) was moved on clause 62 which defines a 'higher risk building'. Mike Amesbury (Lab) explained the amendment sought to provide power for the Secretary of State to define by regulation high-risk buildings which did not meet the criteria on the face of the Bill of 18 metres or at least 7 storeys.

In debate Mr Amesbury explained the amendment was a response to the issue raised in evidence to the Committee that the definition did not adequately capture the complexity of a building (lower than 18m). In response, the Under-Secretary of State for Levelling Up, Housing and Communities, Eddie Hughes, argued stakeholders had thought a proportionate approach was being taken with the height levels, and the definition related to the greater fire risk in occupied buildings higher than 18m. He also argued the amendment replicated an existing power in the Bill to amend the definition by regulation following advice from the Regulator. The amendment was withdrawn.[52]

The Government made a series of amendments to clause 69 which defines the 'Accountable Person'. In the Bill, the accountable person is responsible for meeting the statutory obligations for higher risk buildings in occupation. The amendments (41 to 51) deal with the situation where a property is held in commonhold, and where the commonhold association owns and manages the common parts of the building and will therefore be the accountable person. The Minister explained the amendments clarified where responsibility for building safety would sit when the right to manage had been exercised.

Speaking for the Opposition Mike Amesbury (Lab) said many of the amendments are "technical tidying-up exercises" but noted the level of secondary legislation still required, and asked how disputes around who

[51] PBC 23 September 2021 c320

[52] PBC 19 October 2021 c326-331

would be the principle accountable person and the accountable person would be resolved. The Minister told the Committee:

> My understanding is that, if there is contention over who is responsible, the principal accountable person will first and foremost be the person responsible for the exterior of the building. That gives us an easily defined headline position, but, as he rightly points out, there is incredible complexity in English law when it comes to property ownership. It is good that the opportunity arises within the Bill to allow flexibility for the Secretary of State to redefine the accountable person, should it transpire that for some reason there is an entity that has escaped the clutches of this clause. Hopefully we have covered everybody now, given the complex amendments we have tabled; but, should the need arise in future, the Secretary of State has that flexibility.[53]

The amendments were agreed and clause 69 was also divided into two clauses, 69A and 69B, with the first part the provisions defining an accountable person, and the second part the provisions allowing for the making of regulations on the parts of the building they are responsible for.[54]

The Government made amendments to clauses 70 and 71 which deal with defining an accountable person. Amendments 52 and 53 are technical and deal with a situation when an accountable person has a repairing obligation for the exterior (so they can become the principal accountable person).

Amendments 54 and 55 deal with the determination of an accountable person by tribunal and provide for a situation where an interested party (who can apply to the tribunal under the clause) can be someone who doesn't hold legal estate or is the regulator. The amendments were accepted by the Opposition.

Managing building safety

The Bill creates a series of new roles including the building safety manager and the accountable person. Clauses 83 and 84 set out the requirement of accountable persons to assess and manage building safety risks. In the debate on clause 83, Mike Amesbury (Lab) asked about the capacity for buildings to be regularly assessed:

> ...We have principal accountable persons, accountable persons, building safety managers and 12,500 to 13,000 buildings. There will be new builds each year; I am not sure what the projections are. It is about having that reassurance that the new regime can be effectively implemented, and that people will have the competency and qualifications. Who will pay for this landscape? It seems potentially very costly. What salary level would a building safety manager, a principal accountable person or an accountable person have?

53 PBC 19 October 2021 c336-7

54 PBC 19 October 2021 c338

The Minister, Eddie Hughes, argued organisations may have the skills and knowledge in their structure already, while legislation provided a benchmark that organisations would need to meet:

> We return to the question of capacity. I touched on the idea that organisations such as housing associations or councils already have their buildings under a management structure and a safety structure, and already have appropriate people appointed to those roles. They will have a benchmark with regard to the legislation that sets out the requirements of a building safety manager against which to measure that they have the appropriate skills and competences in place. The fact that within those organisations they will need to identify a named person who has those competences will focus minds, albeit that the person with those responsibilities might not need to discharge all the duties; they can delegate them to others.
>
> The hon. Gentleman is right that this is a big endeavour, but it already exists in many organisations. On the appropriate salary levels, I think it is beyond the scope of the Bill to identify the remuneration for people employed in this, but as I say there are already people doing this role and I am sure that those who are already managing their buildings effectively and safely will not find this a much more onerous obligation.[55]

In the debate on clause 85, which provides for a 'safety case report'. A duty is created for principle accountable person to prepare a safety case report when the building is occupied or when they become accountable for it. In debate Mike Amesbury (Lab) asked how building safety information such as this would be obtained where construction companies had established 'special delivery vehicles' and then folded them.

The Minster said the loss of information should be prevented by the golden thread concept.

> With regard to the structure of companies that are set up, if the hon. Gentleman is referring particularly to new buildings, the idea of the golden thread that runs through this process means that we will be capturing more information, more or less from conception of the building through to its construction and occupation. It means that we will have better access to information, and safety will have been built in early on and a more rigorous process adopted in order to ensure that safety, given the fact that named people will apply throughout the whole process, so I think assurance will be built in once the Bill is introduced.[56]

In debate on clause 88, which would require the retention of specific information as part of the 'golden thread', Mike Amesbury (Lab) asked how it would apply to buildings converted under permitted development. In response, the Minister, Eddie Hughes said:

> Regardless of how buildings have ended up in scope—whether through permitted development rights or otherwise—they will be part of the regime. Therefore, the golden thread will apply. My understanding of permitted development rights, however, is that currently a permitted development right

55 PBC 19 October 2021 c352

56 PBC 19 October 2021 c356

cannot convert to a building over 18 metres. Someone would have to apply for planning permission.[57]

Engagement with residents and their duties

Mike Amesbury (Lab) moved amendment 13 to amend clause 91 on the residents' engagement strategy. The Bill requires principle accountable persons to prepare a 'residents' engagement strategy' for promoting resident involvement in building safety decision making. The amendment would add 'ownership structure' to the clause, with the intention of allowing residents to better understand the ownership structure of a leasehold property. The Minister indicated the Government would not accept the amendment, arguing the accountable person role was the key in having a person clearly identifiable for building safety rather than the owner. In addition he argued the amendment would not work as intended and other clauses allowed information on accountable persons to be available to residents. The amendment was withdrawn.[58]

In the debate on clauses 95 and 96, which create duties on residents and owners, Ian Byrne (Lab) asked what safeguards were in place to prevent an accountable person 'bullying' a resident with these provisions. The Minister set out the process of escalation that may be used and that the Bill created a complaints process, with the Building Safety Regulator "a tier above the system" that would provide reassurance.[59]

The Government moved an amendment to clause 97, which deals with access to premises, to provide for a request for access only being made to residents aged 16 or over. Eddie Hughes explained age 16 was a relevant age as it was the youngest age at which a tenancy could be granted.[60]

Mike Amesbury (Lab) moved amendment 40 to clause 118. Clause 118 requires multiple accountable persons for a building to cooperate. The amendment, Mr Amesbury explained, was a result of evidence given by housing lawyer Justin Bates, and would allow for the Secretary of State to arrange resolution in a dispute between accountable or responsible persons. Eddie Hughes indicated the Government could not accept the amendment as resolving disputes was already provided for in the Bill and there were legal concerns over its use. The amendment was withdrawn.[61]

57 PBC 19 October 2021 c361
58 PBC 19 October 2021 c362-4
59 PBC 19 October 2021 c366-7
60 PBC 19 October 2021 c367
61 PBC 19 October 2021 c383

4.5 Building safety charges (clause 120, schedule 7)

Clause 120 will imply additional covenants into 'relevant leases' of higher-risk buildings. There will be a requirement on tenants (long leaseholders) to pay a variable service charge for the upkeep of the building. Under these additional covenants landlords will be able to pass on the cost of running/managing the new safety regime to tenants. These costs will be included in a new building safety charge.

During the clause stand part debate on clause 120 and schedule 7, Mike Amesbury (Lab) asked whether historical remediation costs could be recovered via the new building safety charge.[62]

The Minister, Eddie Hughes, said:

> ...the charges that will be covered by the system are those that result from the introduction of the Bill, and safety aspects that will be applied going forward. It is not about retrospective remediation. There is a clear delineation between the two, and we will make very clear what is covered.[63]

The clause as introduced was ordered to stand part of the Bill.

4.6 Remediation and redress (clauses 124-126)

Service charges in respect of remediation works

Clause 124 will amend section 20 of the Landlord and Tenant Act 1985. Section 20 places a duty on landlords to follow a consultation process where the cost of proposed works will result in any leaseholder paying more than £250.

Where prescribed remediation works are planned,[64] clause 124 will require landlords to take reasonable steps to recover costs through other avenues before passing on costs to leaseholders.

During the clause stand part debate on clause 124 the Minister, Christopher Pincher, expanded on its purpose and impact:

> The clause will enable the Secretary of State to prescribe the reasonable steps that the landlord must take, and how that landlord can demonstrate to leaseholders that they have taken them. Landlords will need to comply with guidance issued by the Secretary of State, which will provide clarity on the reasonable steps that the landlord must take. The guidance should act as an important resource for all leaseholders and landlords alike, providing clarity

62 PBC 21 October 2021 c390

63 PBC 21 October 2021 c391

64 Regulations will prescribe the type of work covered by this section.

> and transparency for landlords, and assurances for leaseholders that the requirements have been met.
>
> The clause also requires landlords to provide leaseholders with details of the steps that they are taking and their reasons for their course of action. The Government will be able to prescribe in regulations the information that must be provided to leaseholders. That will mean that leaseholders have sufficient understanding of decisions taken about their building and why any remediation costs have been passed on to them. Landlords will be required to have regard to observations made by leaseholders or a recognised tenants association.[65]

He said statutory guidance would be published on which consultation would take place.[66] This guidance will cover what constitutes 'reasonable steps'.

Rachel Hopkins (Lab) asked about the impact on developers and other companies which "have folded since they built a building."[67] Christopher Pincher addressed this issue in a later sitting during the clause stand part debate on clause 138 (liability of officers of body corporate etc).[68] He explained under clause 138 "where individuals who control a corporate body participate in committing criminal offences under parts 2 and 4 of this Bill, they, too, are criminally liable for those offences."[69] On dissolving special purpose vehicles, he said:

> I may have said, "if a company folds"; what I hope I said was that if and when a company dissolves, the dissolution of the company does not prevent an individual—a senior person, a manager or a director—from being liable for offences if they were there at the time the offence was committed.[70]

The clause as introduced was ordered to stand part of the Bill.

Duties relating to work to dwellings etc

Clause 125 would add a new section 2A to the Defective Premises Act 1972. The new section would "create a new duty to ensure that any work done to a dwelling does not render that dwelling unfit for human habitation."[71]

During the clause stand part debate on clause 125, Christopher Pincher confirmed courts would decide whether a dwelling is fit for human habitation on the facts of the specific case.[72] He confirmed legal aid would not be available for these cases and said action could be taken by the landlord or freeholder – it would not necessarily fall to leaseholders.[73]

65 PBC 21 October 2021 c394
66 PBC 21 October 2021 c396
67 PBC 21 October 2021 c395
68 PBC 21 October 2021 c428
69 PBC 21 October 2021 c427
70 PBC 21 October 2021 c428
71 PBC 21 October 2021 c398
72 PBC 21 October 2021 c399
73 PBC 21 October 2021 c398

Mike Amesbury (Lab) asked about the number of claims made under the existing regime of the 1972 Act and spoke of "the nightmare of litigation and the costs in a David and Goliath process."[74]

Christopher Pincher committed to writing "or informing" Mr Amesbury "at a later point about the specific number of cases."[75]

The clause as introduced was ordered to stand part of the Bill.

Limitation periods

Clause 126 will insert new provisions in the Limitation Act 1980. This Act governs the period within which legal action must be brought in regard to section 1 of Defective Premises Act and section 38 of the Building Safety Act 1984. The intention is to extend the limitation period from six to fifteen years. The fifteen year limit will also apply to the new section 2A added to the Defective Premises Act by clause 125 (but not retrospectively).

Mike Amesbury (Lab) moved amendment 14 to extend the limitation period to 30 years. He said the fifteen year extension would "miss a significant number of buildings". He also made reference to the change giving relief "to a small number of leaseholders and residents in the current building crisis" as "many building owners have become insolvent".[76]

The Minister, Christopher Pincher described the retrospective nature of the extended limitation period in respect of section 1 of the 1972 Act as "a highly unusual" change to "provide a legal route to redress that previously would not have been possible for hundreds of buildings, benefitting thousands of leaseholders."[77] He argued limitation periods "cannot go back indefinitely" and referred to the need for a "proportionate longstop".[78] He acknowledged limitation periods are to some extent arbitrary, and that some people will always fall on either side of the line. He considered "a 15 year limitation period is appropriate."[79]

Mike Amesbury withdrew the amendment saying the subject would likely be returned to on Report.[80]

74 PBC 21 October 2021 c399
75 PBC 21 October 2021 c399
76 PBC 21 October 2021 c400
77 PBC 21 October 2021 c402
78 PBC 21 October 2021 c402
79 PBC 21 October 2021 c403
80 PBC 21 October 2021 c404

4.7 New Homes Ombudsman (clauses 127-132, schedule 8)

Clauses 127-131 together with schedule 8 provide for the Secretary of State to make arrangements for a New Homes Ombudsman (NHO) scheme. This is a response to concerns about the quality of new-build housing and consumers' rights of redress when things go wrong.

During the clause stand part debate on clauses 127-129 and schedule 8, the Minister, Eddie Hughes confirmed discussions are underway with the devolved executives about an extension of the scheme to cover those areas. Depending on the outcome, the matter may be returned to at a later stage of the Bill's proceedings.[81]

He confirmed, in response to a question posed by Ruth Cadbury (Lab) that housebuilders will have to be a member of the scheme so "if they do not comply with the scheme requirements and are therefore rejected from it, that will effectively prevent them from developing in future".[82]

Mike Amesbury (Lab) sought reassurance on the independence of the NHO in light of membership of the New Homes Quality Board which is currently operating in a shadow capacity and which has a group director of Taylor Wimpey as a member.[83] He asked what would happen if a member of the NHO board was classed as a rogue builder. Eddie Hughes said:

> Such a complex question may be outwith the coverage of the Bill; however, it would be beholden on the Secretary of State to ensure that the process was managed appropriately. Given that the scheme allows for builders who are not complying with the code to be ejected from the ability to develop, I am sure that the opportunity would be there for us to deal with members of the board appropriately. If we can chuck a builder out of the scheme, I am sure that we can deal with a member of the board.[84]

Clauses 127-131 and schedule 8 were ordered to stand part of the Bill.

During the clause stand part debate on clause 132, which provides for a developers' code of practice, Mark Logan (Con) moved an amendment to include specific reference to the issue of preventing water ingress.[85] He also asked whether the code would apply retrospectively.[86]

Responding, Eddie Hughes said there was already a legal duty on developers to prevent water ingress and once established the NHO:

---

81 PBC 21 October 2021 c405
82 PBC 21 October 2021 c407
83 PBC 21 October 2021 c408
84 PBC 21 October 2021 c410
85 PBC 21 October 2021 c414
86 PBC 21 October 2021 c415

> ...will be able to hear complaints relating to a failure to abide by legal requirements and technical standards, as well as non-compliance with the code of practice, where one has been issued or approved by the Government. The code of practice is deliberately broad to allow flexibility in its content, including in the consideration of what should be said on promoting building and fire safety, which includes the issues of compartmentation and water ingress.[87]

On retrospective application, he said "the Government consider that such a change would not meet its intention."[88]

The amendment was withdrawn and clause 132 was ordered to stand part of the Bill.

4.8 Housing complaints made to a Housing Ombudsman (clause 137)

Clause 137 of the Bill will remove the democratic filter introduced by the Localism Act 2011, whereby complaints to the Housing Ombudsman are made by a designated person.

During the clause stand part debate on clause 137, Mike Amesbury (Lab) moved an amendment (16) to require the Housing Ombudsman to consult tenants when dealing with complaints against social housing providers.[89]

The Minister, Eddie Hughes, said the Government could not accept the amendment on grounds that it would raise issues of privacy and data protection.[90] He said a resident making a complaint about their landlord would face the prospect of having information they submitted disclosed to a third party.[91]

Mike Amesbury regretted the lack of reference in the Bill to the voice of tenants, residents or leaseholders and pressed the amendment to a vote. It was defeated by 9 votes to 6.[92] Clause 137 was ordered to stand part of the Bill.[93]

87 PBC 21 October 2021 c416
88 PBC 21 October 2021 c416
89 PBC 21 October 2021 c421
90 PBC 21 October 2021 c424
91 PBC 21 October 2021 c424
92 PBC 21 October 2021 c427
93 PBC 21 October 2021 c427

4.9 Other provisions in the bill (clauses 133-146)

Clause 133 of the Bill creates a new UK-wide regulatory framework for construction products. In Committee the Minister, Eddie Hughes, outlined how it would ensure the Secretary of State would have powers to create a statutory list of safety-critical construction products that would require manufacturers to declare the performance of products to a specific standard and put in place measures to ensure this performance is consistently met. It widens the existing regulatory framework for construction products. The clause was supported by the Opposition in the debate and ordered to stand part of the Bill.[94]

Clause 134 would amend the Regulatory Reform (Fire Safety) Order 2005 following a Government consultation in 2020. It was ordered to stand part of the Bill without amendment.[95]

Clauses 135 and 136 were ordered to stand part of the Bill after a short debate. They make changes to the Architect Act 1997 following a Government consultation in 2020.[96]

Clause 138 extends the liability of offences under parts 2 and 4 of the Bill to officers of corporate bodies. In debate, Mike Amesbury (Lab) asked how these provisions would apply to special purpose vehicles used in the construction sector. The Minister, Christopher Pincher replied:

> In my previous remarks, I may have said, "if a company folds"; what I hope I said was that if and when a company dissolves, the dissolution of the company does not prevent an individual—a senior person, a manager or a director—from being liable for offences if they were there at the time the offence was committed. I hope that that confirms the issue that the hon. Gentleman rightly draws out.[97]

The Review of the Regulatory Regime at least every five years, provided for by clause 139, and as referred to earlier in the debate, was ordered to stand part of the Bill without amendment.[98]

A technical amendment was made to clause 142, which is a power to made consequential provision, with the amendment extending this to Welsh Ministers. The amendment was agreed without debate.[99]

Daisy Cooper (Lib Dem) moved amendment 39 to clause 144. This clause covers regulation making powers in the Bill. The amendment sought to require that statutory instruments laid under the powers in the Bill would require consultation with specific stakeholders (fire safety experts,

94 PBC 21 October 2021 c418
95 PBC 21 October 2021 c419
96 PBC 21 October 2021 c420-1
97 PBC 21 October 2021 c428
98 PBC 21 October 2021 c429
99 PBC 21 October 2021 c431

leaseholders, local authorities and safety and construction bodies). Daisy Cooper explained the reason for the amendment was the level of detail in the Bill that will be determined by secondary legislation and the need for scrutiny. The amendment was supported by Mike Amesbury (Lab). In response, the Minister outlined measures in the Bill to support consultation, including clause 7, and argued the specific measures in relevant parts of the Bill would be more effective. The amendment was withdrawn.[100]

Technical amendments (20 and 21) were made by the Government to clause 146 which covers commencement and transitional provisions.[101]

4.10 Consideration of new clauses

A duty to report on designations under Part XVI of the Housing Act 1985 (New clause 3)

Daisy Cooper (Lib Dem) moved new clause 3 with the aim of placing a duty on the Secretary of State "to consider making designations under part 16 of the Housing Act 1985 to provide funding for cladding and fire safety remediation".[102] Information on designations of defective housing under the 1985 Act can be found in a Library paper.[103]

Responding, Christopher Pincher said he understood the motivations behind the new clause but said it could not be accepted:

> I am afraid that our assessment of this proposed new clause is that, although it is well intentioned, it is disproportionate and does not strike the right balance between funding from the private and public purse. If passed, this new clause would mean that private and social buildings of any height could potentially be designated as defective and be eligible for grant funding of 90% of the property's value, or repurchase by the local authority if we take the two measures together. New clause 3 lacks detail about the types of dwelling covered and clarity about the types of remediation or remediation works to be covered, which provides ample scope and grounds for all sorts of legal interpretation. It is important that our funding decisions are proportional, to ensure that taxpayers' money is used effectively and protected as far as possible.
>
> I should also point out the unintended—and I am sure that it is unintended—but necessarily consequential effect that this new clause would have on local government. It would place a responsibility on local authorities to purchase defective properties, which in a number of cases would place significant strain on those local authorities. In the past two years, Wandsworth has seen an average uplift in funding of 4.5%. The figure in Lewisham is 5%, and in Enfield

100 PBC 21 October 2021 c432-4
101 PBC 21 October 2021 c434-5
102 PBC 26 October 2021 c443
103 Housing: construction defects, Commons Library briefing CBP-2030, 16 May 2011

> it is 4.8%. The Committee needs to recognise the excessive burden that potential costs may impose on local government.[104]

Daisy Cooper withdrew the motion saying if the burden of remediation costs do not fall on the state "they fall on leaseholders, who are the innocent parties – the only innocent parties – in all this."[105]

Building Safety Indemnity Scheme (new clause 4)

Daisy Cooper (Lib Dem) introduced new clause 4 which would have required the Government to set up a fund equivalent to the Motor Insurers Bureau from which grants would be provided to pay for cladding and fire safety remediation. The clause would have provided for funding to be raised from levies on developers, building insurers and mortgage lenders.[106]

She referred to funding of £5.1 billion made available by the Government compared to the Housing, Communities and Local Government Select Committee's assessment of a £15 billion requirement.[107] Mike Amesbury (Lab) said Labour supported "the fundamental principle of rectifying the situation for the hundreds and thousands of people caught in the building safety scandal – to find, fund, fix and recover, using the polluter pays principle."[108]

Responding, the Minister Christopher Pincher said the new clause was unnecessary "as its intention is already being met."[109] He referred to the Building Safety Fund and funding to remediate aluminium composite material (ACM) cladding. He referred to bringing forward "appropriate support" for leaseholders and owners in the 11 to 18 metres cohort. He said the residential property tax would raise £2 billion and the building safety levy (clause 57) would "account for some half a billion pounds of income".[110]

On new clause 4, he said it risked mortgage and insurance industries "bringing significant and protracted legal challenges."[111]

Daisy Cooper asked whether the levy and tax would raise additional money beyond the £5.1 billion committed. Christopher Pincher said this would depend on the spending review and "we expect that to be additional funding".[112]

Spending Review 2021 did not include additional funding for remediation. On 29 November 2021, Michael Gove, Secretary of State for Levelling Up, Housing and Communities, said "I and my Department are looking at every available means to ensure that the burden is lifted from leaseholders' shoulders and

104 PBC 26 October 2021 c445
105 PBC 26 October 2021 c446
106 PBC 26 October 2021 c448
107 PBC 26 October 2021 c448
108 PBC 26 October 2021 c449
109 PBC 26 October 2021 c449
110 PBC 26 October 2021 cc449-50
111 PBC 26 October 2021 c450
112 PBC 26 October 2021 c451

placed where it truly belongs." He said he hoped to update the House "on our plans shortly."[113]

Daisy Cooper withdrew the motion but said she would continue to press for additional assistance for affected leaseholders.[114]

Review of Payment Practices and Building Safety (new clause 8)

The Opposition moved new clause 8 to require the Government to establish a review of payment practices in the construction industry and the impact on building safety within 60 days of Royal Assent. A further new clause (19) which would require a review of the implementation of the Hackitt report, was considered at the same time. Mike Amesbury (Lab) argued the first new clause would allow an issue identified in the Hackitt report to investigated with recommendations made to Parliament. He also set out the intent behind new clause 19:

> The new clause simply ensures that the Government publish an assessment of their implementation of the Hackitt recommendations within a year of the Bill passing. Given its centrality in implementing the recommendations alongside the Fire Safety Act 2021, and the significant amount of secondary legislation yet to be published even in draft form to support it, it is right that we take stock of how well it reaches its intended goal of implementing the findings after the regulations come into force.[115]

Responding for the Government, Christopher Pincher agreed on the importance of dealing with payment practices and set out a series of actions ongoing in industry and Government. He noted following the Hackitt Report the Government had established the procurement advisory group, adding:

> ...As part of that, we have sponsored the creation of guidance on how the industry can implement collaborative approaches to procurement, to deliver those safe buildings and to tackle poor behaviours across the supply chain. It will outline how those approaches support the future regulatory regime as set out in the Bill.
>
> The group will then work with the industry to implement the principles of the guidance as widely as possible. The guidance will be iterative and will be reviewed in line with any amendment to the Bill ahead of Royal Assent; of course, as the hon. Gentleman will know, amendments can be tabled on Report as well as in the other place.[116]

The Minister argued in favour of industry-led solutions and said it would not be proportionate to legislate on this issue. On new clause 19, the Minister argued clause 139 already allowed a review every five years. The amendment was withdrawn.

---

113 HC Deb 29 November 2021 [Fire Safety Remediation: Protection for Leaseholders].

114 PBC 26 October 2021 c452

115 PBC 26 October 2021 c454

116 PBC 26 October 2021 c455

Devolved Building Safety Standards Co-operation Review (new clause 9)

New clause 9 was moved by Daisy Cooper (Lib Dem) to require the Secretary of State to conduct a review into how formal cooperation on building safety standards could occur across the UK. Daisy Cooper said there were two reasons for the new clause – firstly because it was argued the UK Government could 'learn from our neighbours, especially Scotland' highlighting their approach to cladding remediation and a ministerial working group on mortgage lending and cladding; and secondly, to help establish improvements in safety standards. The Minister noted the devolved nature of building safety, and highlighted the cooperation taking place as part of the building safety programme:

> ...meetings with representatives of all three devolved Administrations take place at least fortnightly, enabling the sharing of information and latest policy developments and intentions. I will give the Committee an example. We have been working closely with the Welsh Government, including in relation to applying part 3 of the Bill to Wales. We are also liaising closely with both Scotland and Northern Ireland.[117]

The new clause was withdrawn.

Assessment of Building Safety and Emergency Status (new clause 10)

New clause 10 was moved by Daisy Cooper (Lib Dem) to require the Secretary of the State to conduct an assessment of the overall state of building safety and fire safety defect remediation in England and report to Parliament, including an assessment of whether it would constitute an emergency. Daisy Cooper argued the likely time required to remediate buildings meant the issue constituted a formal 'emergency' under the Civil Contingencies Act 2004, and such an assessment would allow faster progress to be made. The new clause was supported by the opposition.

The Minster, Christopher Pincher, said he felt the review already provided for under clause 139 of the Bill allowed for regular reviews of the building safety system, and this clause would cause 'duplication and confusion.' Daisy Cooper withdrew the amendment but noted:

> I would highlight two points. The first is that the Minister suggested that new clause 10 was not necessary because of clause 139, but I respectfully highlight the fact that clause 139 relates to an independent review of the building regulatory regime and the regulation for construction products, so this is a process. Clause 139 relates to future regulation; it does not apply to the remediation of historical fire safety defects.
>
> Secondly, although the Minister was at pains to highlight that he appreciates the urgency, I would highlight that clause 139, on the future review, requires

[117] PBC 26 October 2021 c458

> only that the Secretary of State appoints a reviewer within five years of the Act passing. We have tens of thousands of innocent leaseholders who cannot wait another five years for their houses to be made safe so that they can get on with their lives. I said before that the purpose behind the new clause was to highlight the emergency and the urgency with which we would like the Government to act. Many of us feel as though the Government are not acting with the necessary urgency, but I hope the Minister hears that point.[118]

Assessment of mental health impact on leaseholders (new clause 11)

Ruth Cadbury (Lab) introduced new clause 11 to put a duty on the Secretary of State to conduct a review of the impact of fire safety issues leaseholders' mental health. The intention was for the findings to be published along with recommendations for the provision of mental health support.[119]

Responding, Christopher Pincher said the Government recognised the difficult situation many leaseholders found themselves in. He rejected the amendment on the basis that access to mental health support must be based on clinical need and said: "We do not believe that a Government review of the effect on mental health is an appropriate or practicable approach."[120]

The new clause was withdrawn.

Assessment of impact of building safety on access to insurance (new clause 12)

Mike Amesbury (Lab) introduced new clause 12 to require the Government to assess the impact of building safety risks on the insurance market for residential buildings and professional indemnity insurance for those working in the sector. The review would make recommendations for any further action needed.[121]

Speaking to the new clause, he highlighted "a shocking rise in insurance premiums of 1,400% over the past two years" in a particular development.

Christopher Pincher, responding, said he believed the intention of the new clause, to improve access to affordable residential and professional indemnity insurance, "should be met by other provisions in the Bill."[122] He referred to work carried out using the Building Safety Fund and other measures to "be brought forward shortly" to ensure buildings are safer resulting in access to more affordable insurance.[123] He committed, following Royal Assent, to monitor the provision of insurance and to work with stakeholders "to encourage a much more proportionate approach for

118 PBC 26 October 2021 c461
119 PBC 26 October 2021 c461
120 PBC 26 October 2021 cc466-7
121 PBC 26 October 2021 c470
122 PBC 26 October 2021 c472
123 PBC 26 October 2021 c472

insuring, for pricing insurance, and for ensuring and delivering its availability."[124]

Mike Amesbury asked about a referral to the Competition and Markets Authority (CMA). Christopher Pincher said "nothing is off the table as we try to ensure that the insurance sector lives up to its responsibilities to deliver a fair and proportionate insurance-based set of products to its customers."[125]

Mike Amesbury withdrew the new clause noting there would be "an opportunity for more conversations on the matter on Report."[126]

Assessment of impact of the Act on access to mortgage finance (new clause 13)

Mike Amesbury (Lab) moved new clause 13 to require an assessment of the impact of building safety issues on leaseholder access to mortgage finance and its impact on the wider housing market.[127] He referred to Bank of England concerns about the impact on lenders and their ability to cope should leaseholders be unable to meet their mortgage commitments.

The Minister, Christopher Pincher said the Government are working with the industry to unlock the mortgage market. He explained Government action to support the development of PAS 9980, a code of practice for professionals undertaking external wall assessments which it is hoped will replace EWS1 assessments. He said they were considering how residents' voices can be "further strengthened in the remediation process" and hoped to say more about that at a later date.[128]

Mike Amesbury withdrew the new clause but said "we may come back to this issue on Report."[129]

Agency to manage building safety works and funding (new clause 14)

Mike Amesbury (Lab) moved new clause 14 which would create a 'Building Works Agency', the purpose of which would be to manage cladding remediation work. The Secretary of State would have to set the agency up within six months of Royal Assent, and it would have the following responsibilities:

> (a) overseeing an audit of cladding, insulation and other building safety issues in buildings over two storeys;

124 PBC 26 October 2021 cc472-3
125 PBC 26 October 2021 cc477-8
126 PBC 26 October 2021 c478
127 PBC 26 October 2021 c478
128 PBC 26 October 2021 cc479-80
129 PBC 26 October 2021 c480

(b) prioritising audited buildings for remediation based on risk;

(c) determining the granting or refusal of grant funding for cladding remediation work;

(d) monitoring progress of remediation work and enforce remediation work where appropriate;

(e) determining buildings to be safe once remediation work has been completed;

(f) seeking to recover costs of remediation where appropriate from responsible parties: and

(g) providing support, information and advice for owners of buildings during the remediation process.

Introducing the amendment, Mr Amesbury argued:

> We have tabled a lot of amendments and new clauses because although in many ways the Bill represents a step forward—at last—we want to highlight the large areas of this ongoing scandal that are not covered and will not be fixed by the Bill. It is clear, from looking at the amendment paper and considering all the aspects of the crisis that we are trying to address, that what is really wrong with the Government's approach is that there is no central plan. By tabling the new clause, we repeat our call for the Government to act across the piece to solve the crisis, to put in place a building works agency, and to do what should have been done in 2017. We need a more interventionist, hands-on approach.
>
> We propose a team of experts to do what the Government have not done: to go from building to building to assess real risk and decide what needs to be fixed and in what order, use the building safety fund to get those buildings fixed, and oversee the work. Crucially, the Government could then sign off the buildings as safe and sellable, bringing certainty back to the market.
>
> Finally, the Government could then take on those who are responsible for creating the crisis and who need to pay. That approach was put in place by a cross-party group of politicians and experts in Victoria, Australia, after the fire in Australia and, later, at Grenfell Tower. It requires our Ministers and the new Secretary of State to be prepared to step up, look afresh, as the new Secretary of State said, and lead from the front, rather than rely on a broken market and leaseholders on the precipice of bankruptcy. I hope that the Minister can accept the new clause. It will not be the last time that a variation of it is brought before the House.[130]

During debate the clause was withdrawn. Points raised included that the remediation process was in progress, that responsibilities for enforcement are in place, the extent to which a new central agency would improve the process, the benefits of a central agency, and the greater scale of remediation in England compared to Victoria.[131]

130 PBC 26 October 2021 c481

131 PBC 26 October 2021 c481-5

Waking watch (new clause 15)

Ruth Cadbury (Lab) introduced new clause 15 to require a review of waking watch policies.[132] She referred to waking watches initially being thought of as a temporary solution to fire safety issues in the aftermath of the Grenfell Tower tragedy, but which are still in place in many blocks four years later. She raised the cost of waking watch patrols and the lack of quality standards applied to their work.[133]

Responding, Christopher Pincher said action was already underway to "encourage the use of more appropriate long-term measures"[134], he doubted a review would offer any "material, practical value or assistance to leaseholders in difficult positions."[135] He outlined the following ongoing actions:

> We are already working with the National Fire Chiefs Council to review and strengthen the sector-led guidance in order to re-emphasise the temporary nature of waking watches and the alternative proportionate fire safety interventions to be considered before implementing a waking watch—particularly in buildings below 18 metres. We expect the revised guidance to be published shortly.
>
> The hon. Lady mentioned the waking watch relief fund, which provides £35 million to incentivise the installation of a common alarm system. By the end of August that fund had allocated over £22.5 million, covering around 264 of the highest-risk buildings. We estimate that that has benefited over 20,000 leasehold dwellings. I appreciate what the hon. Lady is trying to achieve, but I remind her that on 16 September we reopened the waking watch relief fund so funds can be made available to those in the greatest need. I hope that the hon. Lady recognises that the practical application of new clause 15 will not be to offer any material assistance to leaseholders.[136]

Ruth Cadbury withdrew the new clause.

Monthly Building Safety Updates (new clause 16)

Mike Amesbury (Lab) moved new clause 16 which would require the Government to publish data on remediation progress for non-ACM cladding, similar to the information provided in the monthly data release for ACM remediation. It also asked for additional data collected from fire authorities on interim fire safety measures. In response the Minister, Christopher Pincher said the clause was unnecessary as the Department intended to expand the data available when it had been quality assured:

> ...We will continually review the information we hold on cladding remediation and publish all appropriate information when it is ready, which involves undertaking necessary quality assurance. As we have done with the ACM

132 PBC 26 October 2021 c486
133 PBC 26 October 2021 cc487-8
134 PBC 26 October 2021 c489
135 PBC 26 October 2021 c489
136 PBC 26 October 2021 c489

> database, we will expand the amount of data and analysis on remediation progress for buildings with unsafe non-ACM cladding when the data is available and once it has been appropriately quality assured.
>
> The hon. Gentleman asks if we will do more; the answer is yes, but we will do it when we are able to provide quality data, properly quality assured. For example, further analysis is being undertaken related to the building safety fund, the data collection on the external wall systems on high-rise residential buildings and the material that is in use on residential buildings between 11 and 18 metres. Data on these areas will be published in due course, adding to what we already publish monthly.
>
> The Committee has acknowledged that the data published on the progress of ACM remediation is high quality, full and transparent. We look forward to being able to do the same with non-ACM remediation and waking watch relief fund data as they are available.[137]

The amendment was withdrawn.

Presumption of allowing urgent building safety remediation work (new clause 17)

Daisy Cooper (Lib Dem) introduced new clause 17 which would have allowed for "the presumption of consent for leaseholders to carry out urgent building safety work where absent freeholders cannot be contacted or refuse to respond."[138]

She referred to evidence from the National Housing Federation (NHF), the representative body of housing associations, which highlighted challenges their members faced when dealing with absent or offshore freeholders. She drew comparisons with legislation giving a presumption of consent for the installation of broadband in blocks of flats.[139]

Christopher Pincher set out three concerns with the clause:

- It did not make clear what type of work would constitute urgent building work, how it would be funded, or the rationale for a 90-day notice period, all of which could lead to legal challenges.
- Tenants would have to wait at least 90 days before beginning remediation.
- Maintenance of the common parts of buildings does not, as a rule, come within the responsibilities of leaseholders and tenants. Therefore, the clause would risk undermining the role of accountable persons in the upkeep of commons parts.[140]

By way of reassurance, he said the Bill already offered the policy intent of the clause "by ensuring that there is a robust definition in place that identifies the

137 PBC 26 October 2021 c491-2
138 PBC 26 October 2021 c492
139 PBC 26 October 2021 cc492-3
140 PBC 26 October 2021 c493

accountable person for buildings that fall within scope. The Bill automatically places statutory obligations on those persons, making them responsible for effectively managing building safety in accordance with the new regime."[141]

Daisy Cooper said she would check back with the NHF to see if this would meet their concerns and withdrew new clause 17.[142]

Assessment of impact of building safety issues on social housing sector homebuilding (new clause 20)

Mike Amesbury (Lab) introduced new clause 20 to require an assessment of the impact of building safety requirements on social housing providers' stock maintenance programmes and the development of future homes.[143]

He referred to an announcement by the NHF saying "one in 10 affordable homes planned by housing associations will no longer be built, because of the costs of making buildings safe."[144] He went on to say: "social rent homes would be the hardest hit, because they build the majority of that tenure within their own income envelope rather than with Government grants."[145] He said:

> The new clause would ensure that the Government looked at the impact of this crisis on future levels of house building in the UK by social home providers, on homelessness and on the maintenance of social homes. It would require them to make recommendations for action necessary to ensure that building safety issues do not inhibit our ability to reach the house-building targets, and that current provision of housing is maintained and improved.[146]

Christopher Pincher said the amendment was not necessary "because a great deal of the information that he seeks about registered providers' finances, their house building and the decency of their properties is already published."[147] He went on to refer to increased spending by private registered providers on repairs and maintenance over 2019-20 and a 13% increase in investment in new housing supply compared to the previous year "driven by greater spending on delivering new social homes for rent."[148] He set out the measures taken by the Government to support the development of new social rented homes.[149]

Mike Amesbury said he was sure there would be "further discussions on Report" and withdrew the new clause.[150]

141 PBC 26 October 2021 cc493-4
142 PBC 26 October 2021 c494
143 PBC 26 October 2021 cc4494-5
144 PBC 26 October 2021 c495
145 PBC 26 October 2021 c495
146 PBC 26 October 2021 c496
147 PBC 26 October 2021 c496
148 PBC 26 October 2021 c496
149 PBC 26 October 2021 c497
150 PBC 26 October 2021 c497

Requirement for Completion Certificate before Occupation (new clause 21)

The Government introduced new clause 21, describing it as 'technical.' The clause provides that higher risk buildings cannot be occupied in phases in the absence of a completion certificate.

The issue arises because at gateway 3,[151] a new hard stop is introduced requiring a completion certificate application and inspection in order for a high-rise building to be used and occupied. This registration is a one-off process so the new clause creates an offence (committed by the accountable person) to occupy a residential unit without a completion certificate for a relevant part of the building. Eddie Hughes, the Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities told the Committee:

> The registration of higher-risk buildings will be a one-off. As buildings are often occupied in stages, that means that there would not be a hard stop for subsequent phases of occupation. That does not meet the policy intent of ensuring that building work is signed off as compliant with building regulation requirements before the building, or parts of it, is occupied. The new clause would therefore make it an offence for an accountable person to allow occupation of a single residential unit, or more, in part of a higher-risk building unless a completion certificate has been issued for the relevant building work. That will apply to new builds and extensions to higher-risk buildings, or to works that create a higher-risk building. The prohibition would apply to any new residential units created. Additionally, we wish to make an accountable person liable if they permit occupation of the building, or parts of it, without a completion certificate, with the principal accountable person's knowledge.[152]

The opposition did not oppose the new clause and it was added to the Bill.

Assessment of impact of building safety issues on shared ownership (new clause 22)

Mike Amesbury (Lab) introduced new clause 22 to place a duty on the Secretary of State to assess the impact of building safety issues and associated funding on shared owners in affected blocks, and to include recommendations for any necessary Government action.[153]

He referred to the concept of shared ownership as implying "an element of joint responsibility" and raised the issue of shared owners facing the full cost of remediation works where their blocks are not eligible for Government

---

151 The Bill introduces a new three-stage gateway process for new high-rise residential buildings during construction and before occupation.

152 PBC 26 October 2021 c441

153 PBC 26 October 2021 cc497-8

assistance.[154] He cited a case of shared owners owning 25% of their homes receiving bills for £85,000.[155] He said:

> This new clause would ensure that the Government look holistically at the impact of the crisis on shared ownership and their response to it. It would also ensure that the Government provide transparency on the potential building safety implications of shared ownership contracts and reinstate confidence in the shared ownership system.[156]

Christopher Pincher said it was right to draw attention to the effect of building safety issues on shared owners, but that the clause was not necessary "as the Government are already taking decisive action to support building owners to make their buildings safe without passing unavoidable costs to leaseholders of whatever type or tenure."[157]

He referred to the Building Safety Fund and for blocks below 18 metres said:

> We are looking closely at the specific issue of the 11 to 18-metre cohort to ensure that everything is being done to protect and support leaseholders, including those who purchased their home on a shared ownership basis. We will bring forward further detail on the support offer for leaseholders in those residential buildings once all the options have been fully considered; we have collected more data, as I may have said previously here and certainly mentioned in the Chamber yesterday.[158]

On the question of shared ownership leases which prohibit sub-letting and thereby close off an avenue that might help owners with financing works, he said:

> I will be happy to consider how we might make it easier for shared owners affected by building safety issues to sublet their homes when that would help them. That will, of course, depend partly on the acquiescence of their mortgage lender, if they have one. I will have a look at that issue for him.[159]

He asked for the clause to be withdrawn "In light of the assurances and reassurances" he had tried to provide.[160]

Mike Amesbury withdrew the new clause. He welcomed the Minister's comments on subletting and said the area of shared ownership may be returned to on Report and at other stages of the Bill.[161]

Review of use of combustible materials (new clause 23)

Mike Amesbury (Lab) moved new clause 23 which would require the Secretary of State to conduct a review on the use of combustible materials on buildings

154 PBC 26 October 2021 c498
155 PBC 26 October 2021 c498
156 PBC 26 October 2021 c499
157 PBC 26 October 2021 c499
158 PBC 26 October 2021 c499
159 PBC 26 October 2021 c500
160 PBC 26 October 2021 c500
161 PBC 26 October 2021 c500

within six months of the Bill receiving Royal Assent. In debate, Mr Amesbury said the Government had opened a consultation on combustible material on the external walls of building in January 2020 but had not published the outcome, and argued since that time (low-rise) public buildings had been constructed with combustible cladding.

The Minister, Christopher Pincher, responded and outlined the changes to regulations made in 2018 to buildings over 18m, annual reviews, and said responses to the 2020 consultation would be analysed as "rapidly as possible". The new clause was withdrawn.[162]

Review of government support for building safety matters (new clause 24)

Mike Amesbury (Lab) moved new clause 24 which would require, within three months of the Bill receiving Royal Assent, a review of Government support for building safety matters, including the measures in this Bill and the building safety fund.

Commenting on the new clause, Mr Amesbury expressed concern with the amount of the available funding and the way the scheme worked in relation to "management fees, agents and product managers, and the role of managing agents and freeholders in agreeing funding contracts". The Minister, Christopher Pincher, argued existing clause 139 provided the opportunity to review the provisions in the Bill every five years, and that the three-month timescale was impractical given it was expected to take 12-18 months to implement the Bill after Royal Assent. He offered to discuss any specific cases which caused concern. The new clause was withdrawn.[163]

[162] PBC 26 October 2021 c501-2

[163] PBC 26 October 2021 c503-4

The House of Commons Library is a research and information service based in the UK Parliament. Our impartial analysis, statistical research and resources help MPs and their staff scrutinise legislation, develop policy, and support constituents.

Our published material is available to everyone on commonslibrary.parliament.uk.

Get our latest research delivered straight to your inbox. Subscribe at commonslibrary.parliament.uk/subscribe or scan the code below:

commonslibrary.parliament.uk

@commonslibrary