HOUSE OF LORDS Library Briefing

Building Safety Bill
HL Bill 98 of 2021–22

Author: Russell Taylor
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On 2 February 2022, the second reading of the Building Safety Bill is scheduled to take place in the House of Lords.

The bill would implement a number of policies aimed at improving the regulation of building safety in England, particularly multiple dwelling buildings over 18 metres tall. This follows increased building safety concerns arising from the Grenfell Tower fire tragedy on 14 June 2017, including the use of unsafe cladding on many high-rise buildings in the country. Following the Grenfell tragedy, the Government commissioned reviews of building safety and introduced the building safety programme, which has resulted in the need for fire remediation works on many buildings.

Among other things, the bill would:

- Establish a building safety regulator to oversee a new safety regime for higher-risk buildings.
- Amend the Building Act 1984 to reform building regulations. The Government intends to use these reforms to introduce a new 'gateway' scheme for the design and construction of higher-risk buildings.
- Create new roles for the management of higher-risk buildings, including accountable persons and building safety managers.
- Allow for a building safety charge in leasehold properties.
- Require landlords to take "reasonable steps" to protect leaseholders from the costs of fire remediation works.
- Improve access to claims under the Defective Premises Act 1972.
- Revise the regulatory framework for construction products, focused on safety.
- Introduce a new homes ombudsman scheme.

Overall, the aims of the bill have been welcomed. However, members of the House of Commons and external commentators have expressed concern that it does not address the high costs of remedial fire-safety works faced by some leaseholders. The Government has already introduced measures to help cover the costs of unsafe cladding removal in buildings over 18 metres. However, it has now stated that measures will be taken to apply this to leaseholders in buildings between 11 and 18 metres. It has indicated that amendments to protect leaseholders from these costs may be tabled in the House of Lords.

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1. Background

The Building Safety Bill forms part of the Government's commitment to improve the regulation of building safety standards. It implements policies arising from the Government's *Building a Safer Future* consultation, which was published in April 2020.[1] Further details on the developments leading up to this are outlined below.

1.1 Rising concerns over building safety standards

Concerns over building safety standards have been higher on the agenda since the Grenfell Tower fire tragedy on 14 June 2017, in which 72 people died. The cause of the fire, which spread through a 24-story residential building comprising 129 flats, has been linked to the unsafe cladding material used on the outside of the building.[2] The public inquiry into the Grenfell Tower tragedy stated there was:

> […] compelling evidence that the external walls of the building failed to comply with requirement B4(1) of schedule 1 to the Building Regulations 2010, in that they did not adequately resist the spread of fire having regard to the height, use and position of the building. On the contrary, they actively promoted it.[3]

The inquiry found that similar materials had been used in over 400 other high-rise residential buildings around the country. This has prompted concerns about the safety of these buildings and also the cost of remediation works.[4]

Further information on the Grenfell Tower tragedy, and how it has impacted on people in other buildings, can be found in the following briefings:

- House of Lords Library, 'Leaseholders: fire and building safety', 28 October 2021
- House of Commons Library, *Grenfell Tower Fire: Background*, 20 January 2020

In addition, while this bill focuses on regulating building safety, Parliament passed the Fire Safety Act in 2021 to update fire safety measures in multi-occupied buildings. Further information on this legislation can be found in the Lords Library briefing, *Fire Safety Bill: Briefing for Lords Stages* (15 September 2020).

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[1] Ministry of Housing, Communities and Local Government, *A Reformed Building Safety Regulatory System: Government Response to the 'Building a Safer Future' Consultation*, April 2020.
[2] BBC News, 'Cladding: Why is it unsafe and will flat owners be refunded?', 10 January 2022.
[3] Grenfell Tower Inquiry, *Phase 1 Report Overview*, October 2019.
[4] ibid, p 12.

1.2 Review of building safety regulations

1.2.1 Dame Hackitt review

The Government announced in July 2017 that Dame Judith Hackitt, a former chair of the UK Health and Safety Executive, would lead an independent review of building regulations and fire safety. The review published two main reports:

- *Interim Report*, December 2017, Cm 9551
- *Final Report*, May 2018, Cm 9607

The reports raised several issues with the current system, including that:

- guidance, roles and responsibilities in the current regulatory systems were unclear;
- there needed to be a better way for residents to raise fire safety concerns; and
- the methods for testing, certification and marketing of construction products and systems was also not clear.[5]

The final report proposed a new regulatory framework, which it stated should be initially focused on multi-occupancy residential buildings over 10 storeys. The review said that the new framework was designed to:

- **Create a more simple and effective mechanism for driving building safety**: a clear and proportionate package of responsibilities for dutyholders[6] across the building life cycle. This means more time will be spent upfront on getting building design and ongoing safety right for the buildings in scope. This will create the potential for efficiency gains; scope for innovation in building practices; and value for money benefits from constructing a building that has longer-term integrity and robustness.
- **Provide stronger oversight of dutyholders with incentives for the right behaviours, and effective sanctions for poor performance**: more rigorous oversight of dutyholders will be created through a single coherent regulatory body that oversees dutyholders' management of buildings in scope across their entire lifecycle. A strengthened set of intervention points will be created with more effective change

[5] Independent Review of Building Regulations and Fire Safety, *Interim Report*, December 2017, Cm 9551, pp 9–10.

[6] For a definition of dutyholders, see: Department for Levelling Up, Housing and Communities, 'Dutyholders: factsheet', 8 November 2021.

control processes and information provision.

- **Reassert the role of residents**: a no risk route for redress will be created and greater reassurances about the safety of their home will be offered, as well as ensuring that residents understand their role and responsibilities for keeping their building safe for themselves and their neighbours.[7]

It also said it was designed to enhance the current model of responsibility, so that:

- Those who **procure, design, create and maintain buildings** are responsible for ensuring that those buildings are safe for those who live and work in them.
- **The Government** will set clear outcome based requirements for the building safety standards which must be achieved.
- The **regulator** will hold dutyholders to account, ensure that the standards are met and take action against those who fail to meet the requirements.
- **Residents** will actively participate in the ongoing safety of the building and must be recognised by others as having a voice.[8]

The Government welcomed the report and agreed with the proposals. The then Secretary of State for Housing, Communities and Local Government, James Brokenshire, stated on 17 May 2018:

> In future, the Government will ensure that those responsible for a building must demonstrate that they have taken decisive action to reduce building safety risks, and that they will be held to account. We agree that the system should be overseen by a more effective regulatory framework, including stronger powers to inspect high-rise buildings and sanctions to tackle irresponsible behaviour. We agree that there should be no buck-passing between different parts of the industry and that everyone needs to work together to change the system. Crucially, given the concerns raised following the Grenfell tragedy, we agree that residents must be empowered with relevant information.[9]

He said the Government would bring forward legislation to deliver "lasting and meaningful change".

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[7] Independent Review of Building Regulations and Fire Safety, *Final Report*, May 2018, Cm 9607, p 3.
[8] ibid, p 4.
[9] HC *Hansard*, 17 May 2018, col 457.

1.2.2 Government consultation on new building safety proposals

The Government ran a consultation on its proposals to reform the building safety regulatory system in June and July 2019, with a response to the consultation published in April 2020.[10] The Government said it had received 871 responses from a range of stakeholders, including residents' groups and representatives from the fire safety and built environment sector.[11] It said respondents had been generally supportive of the proposed new regulatory regime.

The consultation response set out how the Government intended to bring forward the proposals from the Hackitt review, and gave a general update on other Government measures to improve building safety. For example, the paper set out details of the proposed building safety regulator and how certain dutyholders would be made more accountable during the construction and occupation of buildings. It explained that the focus of the more "stringent" aspects of the regulatory regime would initially be on "multi-occupied residential buildings of 18 metres or more in height, or more than six storeys (whichever is reached first)".[12] However, it said this could be extended to other premises if deemed necessary due to emerging evidence of risk.

It explained it would legislate for the main reforms through the Building Safety Bill, along with secondary legislation where necessary.[13]

1.3 Building safety programme and fire remediation works

1.3.1 Building safety programme

In addition to the review of building regulations, the Government established the building safety programme following the Grenfell fire. The programme is intended to ensure "buildings are safe—and people feel safe—now, and in the future".[14] The programme has resulted in updated guidance and advice notes on building safety, with much of it requiring remediation work.

As part of the programme, the Government also appointed an expert panel, led by Sir Ken Knight (a former Chief Fire and Rescue Adviser to the Government), to advise on the immediate measures needed to ensure building safety and to help identify buildings of concern. The panel

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[10] Ministry of Housing, Communities and Local Government, *A Reformed Building Safety Regulatory System: Government Response to the 'Building a Safer Future' Consultation*, April 2020.
[11] ibid, p 8.
[12] ibid, p 11.
[13] ibid, p 8.
[14] Department for Levelling up, Housing and Communities, 'Building Safety Programme', 22 December 2020.

recommended a ban on the use of combustible materials on new high-rise residential buildings (and where building work is taking place), which was implemented by the Government through the Building (Amendment) Regulations 2018.[15] In addition, it advised high-rise buildings were screened for the materials used in their cladding.[16]

1.3.2 Covering the costs of fire remediation works

The Government initially called on building owners to implement and pay for all fire remediation works, including the removal of unsafe cladding.[17] However, concerns have been raised about these costs being passed on to leaseholders and delays making buildings safe.

As a result, the Government has made several funding announcements since 2018 to help with cladding removal. For example, on 16 May 2018, the Government announced it would fully fund the removal and replacement of unsafe aluminium composite cladding (ACM) by councils and housing associations, estimated at a cost of £400m.[18] On 9 May 2019, the Government announced that it would fully fund the removal and replacement of ACM cladding on private sector residential buildings 18 metres high or taller, estimated at a cost of £200m.[19] It has also provided £1bn funding through the building safety fund for the remediation of non-ACM cladding on residential buildings 18 metres and over in both the private and social housing sectors.[20]

An additional £3.5bn in funding, and a long-term low-interest loan scheme for buildings between four and six storeys, was announced by Robert Jenrick, the then Secretary of State for Housing, Communities and Local Government, on 10 February 2021.[21]

However, most recently, the Secretary of State for Levelling up, Housing and Communities, Michael Gove, offered a guarantee that "no leaseholder living in their own flat will have to pay a penny to fix unsafe cladding".[22] He accepted the issue had left leaseholders feeling "trapped" and unable to sell

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[15] For further details, see: Ministry of Housing, Communities and Local Government, 'Building (Amendment) Regulations 2018: frequently asked questions', 21 January 2020.
[16] Department for Levelling Up, Housing and Communities, 'Aluminium composite material cladding', 17 June 2021.
[17] BBC News, 'Grenfell Tower: Government to pay £200m for safer cladding', 9 May 2019.
[18] Ministry of Housing, Communities and Local Government, 'Government announces it will fully fund unsafe cladding removal in social housing', 16 May 2018.
[19] Ministry of Housing, Communities and Local Government, 'Government to fund and speed up vital cladding replacement', 9 May 2019.
[20] Department for Levelling Up, Housing and Communities, 'Remediation of non-ACM buildings', 20 January 2022.
[21] HC *Hansard*, 10 February 2021, col 330.
[22] Department for Levelling Up, Housing and Communities, 'Government sets out new plan to protect leaseholders and make industry pay for the cladding crisis', 10 January 2022.

their homes, and with many facing "vast bills".

As a result, he said he was scrapping the loan scheme for buildings and giving industry two months to agree to a financial contributions scheme for buildings between 11 and 18 metres. If this was not achieved, he said the Government would legislate for a solution, indicating amendments might be tabled to the Building Safety Bill.[23] During the bill's report stage in the House of Commons, the Minister for Housing, Christopher Pincher, said that the Government might introduce the new leaseholder protections as amendments to the bill in the House of Lords (see section 3.3 of this briefing).

The Shadow Secretary of State for Levelling Up, Housing and Communities, Lisa Nandy, welcomed the "shift in tone" of the announcement and hoped the new measures would succeed.[24] However, she expressed concern about the lack of detail accompanying the announcement and said that the removal of cladding had taken too long.

In addition, when pressed on whether costs already paid out by leaseholders would be reimbursed, Michael Gove said he could not guarantee this:

> I cannot, unfortunately […] say that we will be in a position to compensate those who have already contributed. We are seeking to ensure that individuals do not face costs in the future, but again, I will work with colleagues across the House to try to get to the most equitable position possible.[25]

The End Our Cladding Scandal Group welcomed the announcement, saying that it showed the Government understood the "unfairness of forcing victims of the building safety scandal to pay for the collective state and industry failure".[26] However, it said that the promises now needed to be backed by action. It also argued that other issues needed to be addressed:

> There may be more funding for cladding only, but the burden of paying for repairs for other serious safety defects—lack of compartmentation, missing fire breaks, shoddy building work—has still not been lifted from leaseholder shoulders, whatever their building's height.
>
> Nor too have the daily costs hitting leaseholders hard—payments for

[23] HC *Hansard*, 10 January 2022, cols 283–311.
[24] ibid, cols 286–7.
[25] ibid, col 294.
[26] End Our Cladding Scandal Group, 'Our response to Michael Gove's announcement on 10th Jan 2022', 12 January 2022.

> soaring insurance premiums or sky-high waking watch bills[27]—disappeared overnight. Many campaigners have endured a torrid time over the past few years, fighting freeholders and housing associations, begging for even basic details of their buildings, watching their savings bled dry and seeing their mental health worsening. None of that time or money can ever be got back.
>
> There are other issues still to be addressed. We need solutions for leaseholders in buildings under 11m and clarity on what today's announcement means for the thousands in buildings under 18m who have already paid or are being asked to pay for cladding remediation.

Further information on the fire safety programme and concerns about the costs of cladding removal can be found in the following briefings:

- House of Lords Library, 'Leaseholders: fire and building safety', 28 October 2021
- House of Commons Library, *Leasehold high rise blocks: who pays for fire safety work?*, 16 July 2021

1.3.3 Statistics on cladding removal

In its latest statistical bulletin on the building safety programme, the Department for Levelling Up, Housing and Communities announced:

- At the end of November 2021, 94% (448) of all identified high-rise [over 18 metres] residential and publicly owned buildings in England had either completed or started remediation work to remove and replace unsafe ACM cladding (97% of buildings identified at 31 December 2019)—an increase of two buildings since the end of October.
- 407 buildings (85% of all identified buildings) no longer have unsafe ACM cladding systems—an increase of five since the end of October. 335 (70% of all buildings) have completed ACM remediation works—an increase of five since the end of October. This includes 284 (60% of all buildings) which have received building control sign off—an increase of 7 since the end of October.
- Of those with ACM cladding remaining, 41 have started remediation. Of the 29 (6%) buildings yet to start, 5 are vacant (1% of all identified buildings), so do not represent a risk to resident safety, and 17 additional buildings were identified after

[27] For details on this, see: Ministry of Housing, Communities and Local Government, 'Building Safety Programme: Waking Watch costs', 31 January 2021; and 'Waking Watch Relief Fund', 14 October 2021.

31 December 2019.[28]

2. Building Safety Bill: Provisions and commentary

2.1 Draft bill and scrutiny

A draft Building Safety Bill was published by the Government on 20 July 2020.[29]

Scrutiny of the draft bill was carried out by the House of Commons Housing, Communities and Local Government Committee. The committee's report on the draft bill was published on 24 November 2020.[30]

The committee welcomed the bill, but made a number of recommendations to improve it. In particular, it wanted more detail in the bill about how the new safety regimes would operate. It said there was an "over-emphasis on as yet unpublished secondary legislation and regulation left significant gaps in how the new regime would operate in practice".[31] It also believed the bill should offer more protection for leaseholders against costs of remediation work, and expressed concern about the proposed new building safety charge:

> The report finds that, in its current form, the draft legislation fails to provide sufficient protection against leaseholders paying the bill for work to remedy existing fire safety defects.
>
> The building safety charge should be a way of funding the cost of future work, not a mechanism for ensuring residents foot the bill for historic failures in fire safety construction or maintenance.
>
> The committee reiterates its long-standing call on the Government to provide sufficient funding for remedial work and develop mechanisms to recover these costs from those responsible.[32]

The Government agreed with many of the committee's points in its response published in July 2021. For example, it accepted the need to set out as much information as possible alongside the bill, particularly regarding

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[28] Department for Levelling Up, Housing and Communities, *Building Safety Programme Monthly Data Release, England: 30 November 2021*, 16 December 2021.
[29] Ministry of Housing, Communities and Local Government, 'Draft Building Safety Bill', 20 July 2020.
[30] House of Commons Housing, Communities and Local Government Committee, *Pre-legislative Scrutiny of the Building Safety Bill*, 24 November 2020, HC 466 of session 2021–22.
[31] House of Commons Housing, Communities and Local Government Committee, 'Building Safety Bill aims welcome but more detail needed', 24 November 2020.
[32] ibid.

proposed secondary legislation.[33] It has now published some drafts of the proposed secondary legislation and a timeline for implementation of the bill's measures on the Government website.[34]

Regarding the committee's points about protecting leaseholders, the Government reiterated its principal stance that building owners should cover the cost and seek redress from those responsible.[35] It said that it also believed the costs should not fall on leaseholders and set out what it had been doing to help protect them (see section 1.3.2 of this briefing for further detail).

Turning to the proposed building safety charge, the Government's response stated:

> The 'building safety charge' clauses in the draft Building Safety Bill are intended to give leaseholders additional assurance and transparency on costs for the ongoing costs of building safety […]
>
> Where there is a need to fund remediation of historical defects we will introduce provisions to provide greater protection to leaseholders, ensure they have the collective ability to seek redress and/or require the building owner to do so; and, are not faced with unaffordable upfront costs.
>
> Even without special arrangements being made in relation to capital costs there will be no question of such demands landing on leaseholders without notice, as those are costs in respect of which a detailed consultation process will be required. If leaseholders are liable for building safety works, these should be made payable via the service charge and all the existing provisions will remain.[36]

The Building Safety Bill's impact assessment has estimated that the average monthly cost of the building safety charge for leaseholders will be between £9 and £26, with a central estimate of £16.[37] It estimated that the rate would be slightly higher in the first two years of operation, before decreasing.

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[33] Ministry for Housing, Communities and Local Government, *Building Safety Bill: Government Response to Pre-legislative Scrutiny by the Housing, Communities and Local Government Select Committee*, July 2021, CP 473, pp 5–7.
[34] Department for Levelling Up, Housing and Communities, 'Building Safety Bill', accessed 24 January 2022.
[35] Ministry for Housing, Communities and Local Government, *Building Safety Bill: Government Response to Pre-legislative Scrutiny by the Housing, Communities and Local Government Select Committee*, July 2021, CP 473, pp 7–10.
[36] ibid, p 9.
[37] Building Safety Bill, *Impact Assessment*, 5 July 2021.

2.2 Provisions in the bill

The Building Safety Bill consists of 143 clauses and 11 schedules. Several new clauses were added to the bill during its House of Commons stages (see section 3 of this briefing).

This section contains a brief summary of each part of the bill. More detailed information can be found in the following:

- Explanatory Notes, published 28 January 2021
- House of Commons Library, *Building Safety Bill (Bill 139 of 2021–22)*, 16 July 2021

Other useful documents that may aid interpretation of the bill include:

- Department for Levelling Up, Housing and Communities, *Building Safety Bill: Impact Assessment*, 5 July 2021.
- Department for Levelling Up, Housing and Communities, 'Building Safety Bill: factsheets', 8 November 2021

2.2.1 Part 1: Overview of bill

Clause 1 provides an overview of what is in the bill. The explanatory notes explain that the clause has no legal effect and is simply intended to signpost the main elements of the bill.[38]

2.2.2 Part 2: Building regulator and its functions

Part 2 would establish the Health and Safety Executive as the building safety regulator. It also sets out the regulator's duties and functions and how it would operate.

Duties of the regulator

Clauses 2 to 8 describe these duties and functions. In particular, clause 3 states that the regulator would have two main objectives:

- securing the safety of people in or about buildings in relation to risks arising from buildings; and
- improving the standard of buildings.

[38] Explanatory Notes, p 28.

Its duties are then set out over the following clauses. For example:

- Clause 4 would require the building safety regulator to assist and encourage those responsible for the safe construction and management of higher-risk buildings [this is defined in part 4 of the bill], as well as residents in those buildings, to secure the safety of people in or around those buildings in relation to building safety risks.[39]
- Clause 5 would require the building safety regulator to monitor the safety of people in buildings and the standard of buildings, on an ongoing basis.[40]
- Clause 6 states that the building safety regulator must provide assistance and encouragement to persons in the built environment industry and to registered building inspectors to facilitate improvement of competence of organisations and individuals in the industry, or members of the profession.[41]

Clause 7 would allow the building safety regulator to consult on and propose regulations relating to this bill, and clause 8 would require the regulator to arrange a "voluntary occurrence reporting system" regarding building safety. The explanatory notes explain the purpose for the voluntary system and for the separate mandatory system referred to later in this briefing:

> Safety occurrences which cause a significant risk to life safety in higher-risk buildings must be reported through mandatory occurrence reporting. Voluntary occurrence reporting is not intended to be used for enforcement action, but should confidentially capture occurrences that are of a lower risk level and are of value to industry for information sharing, intelligence gathering and improvement of safety within the built environment.[42]

Committees

Clauses 9 to 12 would require the regulator to establish and maintain the following committees. In the explanatory notes, the Government set out the committees and their intended functions:

- **Building Advisory Committee**. Replacing the Building Regulations Advisory Committee for England (BRAC), this committee will give advice and information to the building safety regulator about matters connected with most of its building functions.

[39] Explanatory Notes, p 29.
[40] ibid, p 30.
[41] ibid.
[42] ibid, p 32.

- **Committee on industry competence**. This new committee will advise both the building safety regulator and those in the built environment industry about industry competence, and provide oversight of competence generally and sector-specific competence frameworks.
- **Residents' panel**. This committee will consist of higher-risk building residents and other relevant persons (if any) that the building safety regulator considers appropriate. The building safety regulator will consult this committee on certain matters which it is expected would be of particular interest and importance for residents of higher-risk buildings.[43]

Staffing of the regulator

Clauses 13 to 16 would enable the regulator to call on certain bodies for assistance in its duties. This includes local authorities and fire and rescue authorities. The clauses would also allow for grants for this assistance.

Regulator's reporting requirements

Clauses 17 to 20 set out the reporting requirements for the regulator. This includes:

- It would have to publish strategic plans setting out how it proposes to carry out its building functions. These would have to be updated every few years. The first plan would have to be published as 'soon as reasonably practical' after clause 17 comes into force. The regulator would be required to consult on its draft plan with its residents' panel and then it would have to be submitted to the secretary of state for approval.
- The regulator would have to annually publish aggregated information received from dutyholders obtained through the mandatory occurrence reporting requirements set out in the bill.
- It would have to provide an annual statement about how it has engaged with residents of higher-risk buildings and related groups, including the residents' panel. This could be published in the regulator's annual report.

Regulator's enforcement powers

Clauses 21 to 23 set out the building safety regulator's enforcement powers. For example, clause 21 would allow it to authorise individuals (who would be defined by the bill as 'authorised officers') so that they could exercise powers in relation to 'relevant building functions', including those under the

[43] Explanatory Notes, p 10.

Building Act 1984 and those contained in part 4 of the bill (relating to the occupation regime for higher-risk buildings). The authorised person would have to be "suitably qualified" and have written authorisation.

Clauses 22 and 23 set out offences connected to its enforcement provisions. For example, it would be an offence to obstruct or impersonate an authorised officer or to provide false or misleading information to the regulator. Schedule 2 sets out the investigatory powers of authorised officers under the bill, including powers of entry.

Reviews and appeals of the regulator's decisions

Clause 24 would allow people directly impacted by the building safety regulator's decisions to request a review of the decisions. Secondary legislation would set out the category of decisions that could be reviewed, who could request this and how it would operate. Clause 25 would allow an appeal to a tribunal about a decision only after a review had been undertaken first.

Supplementary provisions: Information sharing and fee-charging

Clause 26 and schedule 3 set out information sharing requirements. The explanatory notes state that they would:

> […] create the power for reciprocal information sharing between the building safety regulator and other persons in connection with certain statutory functions. Schedule 3 also creates legal duties for the building safety regulator and specified bodies to cooperate in connection with certain statutory functions. Clause 26 makes clear that information sharing gateways created by schedule 3 override duties of confidence, but do not override data protection requirements.[44]

The Government intends this to promote joint working between regulators, in support of their functions.[45]

Clause 27 would allow the secretary of state to make regulations allowing the building safety regulator to charge fees and recover charges in relation to certain functions. The explanatory notes give the following example:

> It is expected that regulations would be made under this power to set out fees to be charged to accountable persons or other dutyholders for costs incurred regulating against the new more stringent regime for higher-risk buildings in occupation. The fees regulations could provide

[44] Explanatory Notes, p 46.
[45] ibid, pp 47–8.

details of when a fee or charge is payable, by whom, what it is payable for, what triggers the charge, and to set applicable hourly rates and application fees, including potentially different hourly rates for the work of different types of inspector or expert.[46]

Clauses 28 and 29 would provide for the service of documents and contain definitions and interpretations relating to this part of the bill.

2.2.3 Part 3: Changes to the Building Act 1984

Clauses 30 to 57 would make changes to the Building Act 1984, particularly concerning building regulations and the construction and planning of higher-risk buildings.

For example, the clauses would:

- Define higher-risk buildings at those which are "at least 18 metres in height or has at least 7 storeys" and would make the building regulator the building control authority for higher-risk buildings (and would allow it to take on responsibility for other buildings in certain circumstances).
- Create enhanced enforcement provisions, including new compliance and stop notices and expanding the penalties for contravening building regulations.
- Allow for the establishment of a mandatory occurrence reporting system for fire and safety issues relating to higher-risk buildings. Regulations would set out more details of what would have to be recorded.
- Reform the building control sector in England and Wales through a new regulatory structure. This would include the creation of a new role of a 'registered building inspector' and would require the building safety regulator to maintain a register of building inspectors and building control approvers.
- Create powers to prescribe in building regulations competence requirements for certain people in a building's construction (eg the principal designer and contractor).
- Reform the 'initial notice' procedure involving building control approvers and local authorities.
- Allow the secretary of state to introduce a levy on applications for building control approval (relating to gateway two, see below) in respect of higher-risk buildings by regulations.[47] It

[46] Explanatory Notes, p 51.
[47] The Government ran a consultation on the operation of the levy in 2021, but has not yet published its consultation response: Department for Levelling Up, Housing and Communities, 'Building Safety Levy', accessed 26 January 2022.

> would apply to developers and would have to be for the purpose of meeting any building safety expenditure.

In addition, this part of the bill would amend the powers available under building regulations and would introduce the dutyholders regime concept. These are briefly explained below.

Building regulation changes: A 'golden thread' of information and gateway and process

The explanatory notes state that the changes proposed to building regulations would allow a new regulatory regime to be set up, introducing new procedures and requirements:

> The new regulatory regime will introduce procedures and requirements for new higher-risk buildings as they are designed and built, and for building work carried out on them. Proposals for new higher-risk buildings will go through a gateway process, and proposals for building work on existing higher-risk buildings will go through a refurbishment process, each of which will be laid out in building regulations.[48]

The Government intend the changes to allow for the creation of a 'golden thread' of information regarding building safety. This would ensure that: "the right people have the right information at the right time to ensure buildings are safe, and building safety risks are managed throughout the building's lifecycle".[49]

It also said it intended to use the changes to set up a new 'gateway process' through secondary legislation, through which the construction of higher-risk buildings would be monitored and reviewed. This is explained in the explanatory notes as follows:

> The amendments to the Building Act 1984 in this bill, coupled with existing powers both in the Building Act 1984 and in other legislation, will allow for the creation of a new gateway regime. This will ensure that building safety risks are considered at each stage of a new higher-risk building's design and construction.
>
> The new building safety regulator will oversee the building work and ensure appropriate measures are being implemented to manage compliance. Building work carried out in existing higher-risk buildings will also be overseen by the new building safety regulator. This will

[48] Explanatory Notes, p 57.
[49] ibid, p 13.

either involve building control applications with plans and prescribed documents proportionate to the proposed refurbishment being submitted to the building safety regulator, or by work being carried out under the competent person scheme and being notified to the building safety regulator. This is however separate to the gateways process.

The explanatory notes set out the three expected stages of the gateway regime, it includes:

- Planning gateway one would introduce a number of new requirements in the planning system.[50] This will ensure fire safety matters as they relate to land use planning are incorporated at the planning stage for schemes involving a high-rise residential building. It would require the Health and Safety Executive to be consulted before permission is granted for development of a high-rise residential building in certain circumstances and would require a statement of fire safety.
- Gateway two would happen prior to construction work beginning on a higher-risk building and would replace the current building control "deposit of plans" stage.[51] It would provide a 'hard stop' where construction cannot begin until the building safety regulator is satisfied that the dutyholder's design meets the functional requirements of the building regulations and does not contain any "unrealistic safety management expectations". Dutyholders would have to submit key information to the building safety regulator as part of the building control application.
- Gateway three would be equivalent to the current completion/final certificate phase eg where building work on a higher-risk building has finished and the building safety regulator assesses whether the work has been carried out in accordance with the building regulations.[52] All golden thread documents and information must be handed over to the new building owner. Dutyholders will be required to submit to the building safety regulator a building control application with prescribed documents and information on the final building as constructed. It will be a 'hard stop' where the building safety regulator will assess the application against applicable requirements of the building regulations, undertake final inspections of the completed building work, and issue a completion certificate on approval. It can only be registered once this stage is done. The explanatory notes explain that the "increased regulatory oversight is to ensure that no building, or part of a building, is occupied before

[50] Explanatory Notes, p 12.
[51] ibid, pp 12–13.
[52] ibid, p 13.

> it is safe, and that building owners have the information they need to manage building safety during occupation".[53]

Establishing the concept of dutyholders

Clause 33 introduces the concept of a dutyholder regime for higher-risk buildings, and provides for the building regulations to set out how dutyholders would be appointed. The Government has stated that many aspects of the regime would be taken forward via secondary legislation. However, the explanatory notes set out how the Government intends to use the powers:

> The bill allows for a new dutyholder regime to be incorporated across the lifecycle of higher-risk buildings. This is based on the principle that the person or entity that creates a building safety risk should, as far as possible, be responsible for managing that risk […] When buildings are designed, constructed or refurbished, those involved in the commissioning, design, construction or refurbishment process will have formal responsibilities for compliance with building regulations. These provisions will apply to all work to which building regulations apply […][54]

Dutyholders would be able to be individuals, or an organisation or legal entity.

Dutyholders involved in design and construction would also be required to establish a framework and process for reporting mandatory occurrences.[55] The framework would have to enable workers on-site to report mandatory occurrences.

2.2.4 Part 4: Higher-risk buildings in occupation

Clauses 58 to 116 of the bill relate to the management of occupied higher-risk buildings.

Defining higher-risk buildings

Clauses 59 to 67 defines the use of "building safety risk" and "higher-risk buildings" for this part of the bill. The clauses would allow the definitions to be modified through regulations by the secretary of state. In addition, it would allow the regulator to give advice and recommendations for additional buildings to be considered "higher-risk".

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[53] Explanatory Notes, p 13.
[54] ibid, pp 10–11
[55] ibid, p 13.

Building safety risk is currently defined in clause 59 of the bill as a risk to the safety of people in or about a building arising from any of the following occurring:

- the spread of fire;
- structural failure; or
- any other prescribed matter.

Higher-risk buildings are currently defined by clause 62 as those at least 18 metres in height or with at least seven storeys, and containing at least two residential units.

Clause 68 provides that a building would be deemed to be occupied when "there are residents of more than one residential unit in the building".

Defining accountable persons for higher-risk buildings

Clauses 69 to 72 sets out who would be deemed "accountable persons" for higher-risk buildings. It defines them as:

> A person who holds a legal estate in possession in any part of the common parts, or a person who does not hold a legal estate in any part of the building but who is under a relevant repairing obligation in relation to any part of the common parts.

These clauses also define who would be considered a "principal accountable person".

The explanatory notes state that the "accountable persons" are the "dutyholders during occupation".[56] They can be an individual, partnership or corporate body and there may be more than one accountable person for a building. Where there are multiple accountable persons in a building, one would be identified as the principal accountable person.

There would be a duty on accountable and responsible persons in a building to cooperate with each other. These duties would be backed up by enforcement and sanctions.

Registration and certification of higher-risk buildings

Clauses 73 to 79 cover the registration and certification requirements in relation to higher-risk buildings.

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[56] Explanatory Notes, p 14.

For example, they state:

- A completion certificate would have to be issued before occupation of residential units could be allowed. It would be an offence for the accountable person to allow occupation before this certificate.
- Higher-risk buildings would have to be registered with the regulator. It would be an offence for a principal accountable person to allow occupation if a building is not registered.
- The regulator would be able to direct the principal accountable person for an occupied higher-risk building to apply to the regulator for a building assessment certificate. It would then be an offence not to apply for one.
- The principal accountable person for an occupied higher-risk building would have to ensure relevant notices and building assessments certificates were displayed together in a "conspicuous position" in the building.

Building safety managers

Clauses 80 to 84 would require accountable persons to ensure a building safety manager was appointed before and during occupation of a higher-risk building, unless this role was undertaken by the accountable person and this had been confirmed with the regulator. It would be an offence not to ensure one was appointed.

Further information on the role and need for building safety managers is set out in the explanatory notes:

> The accountable person will need to ensure that the building safety manager has the necessary skills, knowledge, experience and behaviours if they are an individual, and organisational capability where they are not, to carry out the functions assigned. The satisfactory appointment of a building safety manager will be considered by the building safety regulator as part of the certification process for the building assessment certificate.
>
> The building safety manager can be an individual or organisation whose principal role is to support the accountable person in complying with their obligations under part 4 of the bill. Where an organisation is appointed, a nominated individual with the competence to oversee the overall delivery of the role must be named.[57]

[57] Explanatory Notes, p 14.

Duties relating to building safety risks

Clause 85 would require an accountable person to assess the building safety risks for parts of the building for which they were responsible. They would have to do this as soon as possible, and then would be required to carry out assessments:

- at regular intervals;
- whenever they suspect the current assessment is no longer valid; and
- when directed by the regulator.

Clause 86 would require the management and prevention of risks by the accountable person, including preventing risks from "materialising" and reducing the potential severity of risks. The clause states that action would have to be taken promptly and that it could require the accountable person carrying out works on the building.

Clauses 87 and 88 would require safety case reports (containing relevant information relating to the duties in clauses 85 and 86) to be prepared by the principal accountable person. These reports would have to be notified to the regulator, and a copy would have to be provided if requested.

Reporting requirements for accountable persons

Clauses 89 to 92 set out other reporting requirements for accountable persons. This would include maintaining or responding to certain requests for prescribed information on higher-risk buildings and sharing prescribed information with a new accountable person where there were changes in who was accountable. The prescribed information required to be kept under clause 90 would form part of the 'golden thread' mentioned previously.

It would also require the principal accountable person to establish and operate a mandatory occurrence reporting system to receive prescribed information on building safety.

Involvement and engagement with residents

Clauses 93 to 96 cover engagement with residents. For example:

- The principal accountable person would be required to prepare and keep under review a residents engagement strategy. The strategy would have to promote the participation of relevant persons in the making of building safety decisions, and would have to set out what information will be provided and consulted on and how their views will be taken into account.

- Residents could request information of a prescribed kind from the accountable person. Further details on this could be set out in regulations.
- The accountable person would be required to set up a system for the investigation of relevant complaints. The secretary of state could make regulations requiring certain complaints to be referred to the regulator, and the regulator would also need to have a system in place for their investigation.

Clause 97 sets out duties for residents in relation to building safety. It would require that they:

- not act in a way that creates a significant risk of a building safety risk materialising;
- not interfere with a relevant safety item; and
- comply with a request, made by the appropriate accountable person, for information reasonably required for the purposes of a duty under clauses 85 or 86.

Clause 98 provides for contravention notices to be used by the accountable person if a resident did not comply with the clause 97 duties. Clause 99 sets out the process for an accountable person obtaining access to premises if this is refused by a relevant person.

Enforcement by regulator and appeals

Clauses 100 to 103 set out how the duties of accountable persons would be enforced. It would be the regulator's duty to enforce part 4 of the bill. Enforcement provisions include the use of compliance notices and a new offence where the accountable person contravenes a relevant requirement and this contravention places one or more people in or about the building at critical risk.

Clauses 105 to 109 set out the circumstances for appealing compliance notices and certain decisions by the regulator made under this part of the bill or under regulations.

Clause 104 and schedule 7 (which were added to the bill during Commons report stage) set out the "special measures" regime and how it would operate. The explanatory notes state that the purpose of this is to deal with failures of an accountable person to comply with their statutory duties:

> [It would allow] the building safety regulator to apply to the first-tier tribunal for an order appointing a special measures manager to take over the functions of the accountable person, where there is a significant failure or repeated failures to comply with their statutory

duties.[58]

Landlord and tenant provisions

Clause 113 and schedule 8 provide for new implied covenants relating to building safety in relevant leases, and would allow for the introduction of the building safety charge (see section 2.1 of this briefing for discussion of this):

> The clause amends the Landlord and Tenant Act 1985 to provide new implied covenants in relation to building safety. These apply to all leases in higher-risk buildings in England.
>
> The landlord covenants with the tenant to comply with building safety duties as an accountable person, to co-operate with any accountable person and to comply with any order appointing a special measures manager, as may be applicable. The tenant covenants with the landlord to allow access for building safety purposes, to comply with the residents' building safety duties and to comply with the terms of any order appointing a special measures manager.
>
> The clause implies additional covenants in 'relevant leases'—those which are for a fixed term of 7 years or over under the terms of which tenants have committed to pay a service charge which varies in accordance with the landlord's expenditure on the upkeep of the building. The additional covenants will enable the landlord to pass on the running/management costs of the new regime to the tenant but, instead of being included in the service charge as might otherwise have been the case, this will be through the new mechanism of a 'building safety charge'.[59]

The explanatory notes explain that the 'building safety charge' is payable by tenants to the landlord for the ongoing costs of the new regulatory regime and would only include the "costs arising from a defined set of building safety measures set out on the face of the bill and does not include the cost of remedial works".[60] This separate charge would be to "facilitate transparency and accountability in relation to building safety measures and the associated costs".

Clause 114 would amend the Landlord and Tenant Act 1987 so that landlords would have to include certain information about the higher-risk status of the building when making written demands for rents or charges. This would include details and contact details for the accountable persons, building safety manager and the regulator.

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[58] Explanatory Notes, p 17.
[59] ibid, p 155.
[60] ibid, p 223.

Clause 115 would make changes to the Commonhold and Leasehold Reform Act 2002 to align it with provisions in the bill.

Additional provisions in part 4 of the bill

Other clauses in this part of the bill cover matters including:

- what statutory guidance the regulator would be able to issue and how evidence of following that guidance would be considered in any proceedings (clause 110); and
- where there is more than one accountable person in relation to a high-risk building, the accountable persons would be required to cooperate with each other (clause 111).

2.2.5 Part 5: Other provisions regarding safety and standards

Landlord duties to leaseholders in respect of remediation works

Clause 117 would require landlords to take "reasonable steps" before passing on the cost of remediation works to leaseholders through service charges:

> For specified remediation works, the landlord must take reasonable steps to seek other cost recovery avenues before passing on the costs to leaseholders and inform the leaseholders about what those steps were. The landlord must ascertain whether:
>
> - any grant is payable in respect of the remediation works and if so to obtain the grant;
> - all or any of the cost of remediation works may be met by a third party and if so to obtain monies from the third party (which is defined as including monies obtained from insurance, guarantee or indemnity or from the developer or anyone involved in designing or carrying out works on the building); and
> - any other prescribed kind of funding is available and to obtain such funding.[61]

Where funding is obtained, the landlord would be required to pass on the saving to leaseholders by deducting the funding from the overall remediation work and from the apportioned service charges accordingly.

[61] Explanatory Notes, p 159.

Extending scope for claims brought under the Defective Premises Act 1972

Clauses 118 and 119 relate to claims for compensation made under the Defective Premises Act 1972 where building works render a property 'not fit for habitation'.

Clause 118 would extend this principle so that work done on an existing dwelling (eg refurbishment) would be covered by the 1972 act, rather than just initial building work. This would only apply to work carried out after the provision came into force.

Clause 119 would extend the limitation period for compensation claims brought under the 1972 act, from buildings built six years ago to buildings built either:

- 30 years ago, for buildings that were built before the provision comes into force; and
- 15 years ago, for buildings built after the provision came into force.

In addition, where the time period for a claim was about to expire, the clause would allow a year from the commencement of the provision for a claim to be made.

New homes ombudsman scheme

Clauses 120 to 127 would set up a new homes ombudsman scheme. The scheme would allow owners of new-build homes to escalate complaints. The clauses specify how the scheme would operate and would require the secretary of state to make arrangements for how complaints would be investigated and determined.[62]

The clauses would introduce powers to require developers to become, and remain, members of the new homes ombudsman; to provide information to new-build homebuyers about the scheme; and to make provision for sanctions should developers breach the requirements. The clauses include provisions requiring the person who maintains the scheme to maintain a register of members, which must be available for inspection by members of the public. They would also introduce a power to issue or approve a code of practice for the expected conduct and workmanship of its members.

[62] Explanatory Notes, p 20.

Regulation of construction products

Clause 128 and schedule 11 would create a new UK-wide regulatory framework for construction products. The current regulatory framework covering some construction products placed on the UK market is derived from the EU Construction Products Regulation 2011, which is retained EU law.[63] However, the explanatory notes state that not all products would be covered:

> Currently, this framework applies only to products with an EU harmonised standard or conforming to a European Technical Assessment (now, in the UK, a designated standard and a United Kingdom Technical Assessment). The secretary of state has powers to add further products for the Great Britain market. Certain other construction products where they are used by consumers may fall under the requirements of the General Product Safety Regulations 2005 for products to be safe. There are many construction products where there is no existing EU harmonised standard, or European Technical Assessment, and they are not used by consumers—ACM cladding being one example and some types of fire doors another. This gap in regulation became apparent after the Grenfell Tower Fire.[64]

The provisions in the bill would aim to ensure all construction products made available in the UK fall under a regulatory regime. It would seek to do this in two ways, via powers to:

- require construction products to be safe; and
- create a statutory list of 'safety critical' construction products.

The provisions would allow the secretary of state to make regulations about the regulation of construction products. These regulations could include measures imposing standards of product performance, powers to create a list of "safety-critical" construction products and information sharing requirements. Full details are set out in schedule 11.

Changes to the Regulatory Reform (Fire Safety) Order 2005

Clause 129 would bring about various changes to the Regulatory Reform (Fire Safety) Order 2005 (FSO), which applies to non-domestic premises in England and Wales.[65] This follows a public consultation on the FSO, which the Government responded to in March 2021.[66]

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[63] Explanatory Notes, p 171.
[64] ibid.
[65] ibid, p 172.
[66] Home Office, *Fire Safety Consultation: Government Response*, 17 March 2021.

The proposed changes in the bill include that:[67]

- all responsible persons would have to record their fire risk assessment in full and record fire safety arrangements;
- a responsible person could not appoint a person to assist them in the undertaking or reviewing of a fire risk assessment unless that person was "competent";
- responsible persons would be required to provide residents of buildings containing two or more sets of domestic premises with specific information about relevant fire safety matters; and
- responsible persons and relevant accountable persons would have to cooperate and share information where required.

Other provisions in part 5 of the bill

This part of the bill also includes provisions covering:

- requirements for architects to undertake continuous professional development and for disciplinary orders to be listed on the register of architects (clause 130);
- a new appeals procedure where an architect's registration is refused or where they are removed from the register (clause 132); and
- allowing social housing tenants to escalate a complaint to the Housing Ombudsman service directly, by removing the existing requirement to make their complaint via a 'designated person' (eg an MP, councillor or recognised tenant panel). However, they must still have gone through their landlord's complaints process first (clause 133).

2.2.6 Part 6: General provisions

Clauses 134 to 143 of the bill contain general provisions, including the bill's territorial extent and commencement provisions. They also include a requirement for the secretary of state to "periodically appoint an independent person to review the effectiveness of the building regulatory regime and the system of regulation for construction products" (clause 135).[68]

The bill's territorial extent is complex and is set out in a table on pages 242 to 245 of the explanatory notes. Many of the provisions of the bill would apply to England and Wales, with some also applying to Scotland or

[67] Explanatory Notes, pp 172–9.
[68] ibid, p 184.

Northern Ireland. The table also sets out where legislative consent motions have been engaged.

Commencement dates for the bill's provisions also vary. Full details are provided in clause 142.

2.3 External commentary on the bill

The Royal Institution of Chartered Surveyors (RICS) have welcomed the bill, believing the new building safety regulator and the "heavy emphasis" on everyone's duties was a necessary "step change".[69] However, the RICS raised some concerns, including that "the bill may create a two-tier system of regulation especially when low rise buildings can create risk depending on the nature of occupancy". It also raised the need for insurance, training and recruitment support to ensure there are enough qualified individuals to undertake building safety manager or accountable person positions. Their response to the bill said:

> At the current time industry does not have qualified individuals with professional indemnity insurance to fill these roles, and this will fail without Government support.[70]

Similar points about training and recruitment were made by the Chartered Institute of Building, who said that the "satisfactory consideration of these questions will be crucial to the practical implementation of the bill".[71]

The Fire Brigades Union has expressed concern about other aspects of the bill. It said the provisions would do nothing to address the current need for fire remediation works and believed it may lead to more private sector involvement in the fire safety of buildings, which it feared may lower safety.[72]

The HomeOwners Alliance (HOA) also stated the bill did not do enough to help leaseholders. It noted that:

> Campaigners have said that increasing the period of time people have to sue won't solve the problem for many. This is because the developer could have gone out of business, their block may be older than 15 years. Or they may not have the funds to pay for legal action. Indeed, many homeowners have pointed out they are paying hundreds

[69] Royal Institution of Chartered Surveyors, 'RICS response to the publication of the Building Safety Bill', 7 July 2021.
[70] ibid.
[71] Chartered Institute of Building, 'CIOB's initial analysis of the Building Safety Bill', 7 July 2021.
[72] Fire Brigades Union, 'Firefighters identify deadly private sector inspection threat in Building Safety Bill', 22 July 2021.

> of pounds every month on fire safety wardens—there is no way they could fund legal action.[73]

The chief executive of the HOA, Paula Higgins, said that although the HOA welcomed much of the bill, particularly the new regulator, it was urging the Government to take "decisive action" to protect consumers and homeowners, including those in properties under 18 metres.

The End Our Cladding Scandal Group said it "cautiously" welcomed the new measures. However, it also wanted more to be done to protect leaseholders from lengthy and costly "legal fights with little certainty of success".[74]

3. Consideration of the bill in the House of Commons

3.1 Second reading

The bill's second reading took place in the House of Commons on 21 July 2021.[75]

Introducing the bill, the then Secretary of State for Housing, Communities and Local Government, Robert Jenrick, stated it represented the Government's commitment to create a "world-class building safety regime, but one that is sensible and proportionate, reflecting the true level of risk that living in these buildings poses and thereby safeguarding the broader interests of homeowners and residents".[76] He said it was based on the recommendations of the Hackitt review, and that the Government had consulted industry, regulators, local government and the public about its measures. He also said the Government had taken on recommendations from the House of Commons Housing, Communities and Local Government Committee.

Mr Jenrick said that he accepted there were concerns about the costs and other issues faced by leaseholders due to the need for fire safety remediation works in many high-rise residential buildings.[77] He highlighted the Government's £5.1bn fire safety fund and other recent government announcements intended to help leaseholders.[78] He also said that the new developer levy in the bill would ensure that industry would support the cost of historical fire remediation works.

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[73] HomeOwners Alliance, 'Building Safety Bill: little relief for leaseholders suffering cladding nightmare', 7 July 2021.
[74] End Our Cladding Scandal Group, 'Our response to the Building Safety Bill', 7 July 2021.
[75] HC *Hansard*, 21 July 2021, cols 1016–81.
[76] ibid, col 1017.
[77] ibid, cols 1017–29.
[78] This included new announcements set out in a written statement that day: House of Commons, 'Written Statement: Housing Update', 21 July 2021, HCWS228.

However, the secretary of state also stressed that fire risks across buildings was generally very low and explained that that was why the bill was primarily focused on buildings deemed to be a higher risk. He said that the 18-metre mark for a building to be considered higher risk had been recommended by experts:

> That is why, through the bill, we are drawing a very clear line at 18 metres for the enhanced regulatory regime. That is on the advice of building and fire experts that those are the buildings that pose the greatest safety risks in the event of fire spread or structural failure, albeit even there the risk should not be overstated given the low occurrence of fires and the even lower occurrence of fatalities.[79]

The then Shadow Secretary of State for Housing, Lucy Powell, stated that the Labour party supported the majority of the bill's provisions, "which at last strengthen[ed] regulation of high-rise buildings", but believed it should go further.[80] In particular, she stated that it "abandoned leaseholders already trapped in the building safety crisis" and said that Labour would be seeking further protections for them. She noted that the Government had committed to protecting leaseholders from remediation costs and therefore queried why this was not in the bill.

Lucy Powell also said that she believed that the 18-metre mark for buildings to be classed as higher risk and thus covered by the building safety regulator was "arbitrary". She noted that the Fire Brigades Union had said that 11 metres would be a safer threshold and she also feared it would create a two-tier system of building safety. She continued:

> The two-tiered system this bill creates is particularly stark when we look at privatised building control, which will continue to operate below 18 metres. The Hackitt report recognised that choice over building control inspection is a major weakness in the current system, allowing cosy relationships to flourish between developers and the private inspectors they pay handsomely.
>
> The regulator will be the building control body for taller buildings, but not for those under 18 metres, even where other risks could remain. The Government should think again about their arbitrary definition of high-risk buildings.[81]

Similar points were made by Daisy Cooper, Deputy Leader of the Liberal Democrats. Ms Cooper welcomed the proposed building safety regulator and the establishment of accountable persons, but said that she believed

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[79] HC *Hansard*, 21 July 2021, col 1019.
[80] ibid, cols 1029–34.
[81] ibid, cols 1030–1.

there were areas of the bill which were "seriously and dangerously lacking".[82] This included concerns over the 18-metre height cut off and protections for leaseholders. On the latter point, she concluded:

> Surely the Government realise that they must now bring forward protections for the tens of thousands of leaseholders who were promised by the prime minister that they would not be made to pay for fire safety defects not of their making, because if he does not, members of this House will fight tooth and nail, working across the House, to deliver justice for building safety victims.[83]

The Shadow SNP Spokesperson for Housing, Communities and Local Government, Patricia Gibson, also said that she believed the bill did not go far enough to fully address the "current safety scandal" and to help those living in homes they cannot sell.[84] However, focusing on the parts of the bill most applicable to Scotland, she welcomed the new housing ombudsman scheme, as long as it was "implemented in a way that is respectful of devolution".

Clive Betts, chairman of the House of Commons Housing, Communities and Local Government Committee, said that his committee generally welcomed the bill, but that there were still issues members remained concerned about and wanted to see the Government go further on.[85] These included:

- Developers should not be able to appoint their own building control inspectors. He said this created a conflict of interest.
- Height of buildings should not be the determining factor of risk.
- There should be increased protection for leaseholders for all fire remediation costs and it should also cover the removal of cladding in buildings between 11 and 18 metres.
- There should be more transparency in the proposed new product testing regime, so that information is made publicly available where a product which has failed testing comes to market.

The bill passed second reading without a vote.

3.2 Committee stage

Committee stage in the House of Commons took place across eight days in

[82] HC *Hansard*, 21 July 2021, col 1051.
[83] ibid.
[84] ibid, cols 1035–7.
[85] ibid, cols 1038–9.

public bill committee in September and October 2021.[86]

A number of government amendments were made to the bill, with most of these described by the Government as technical amendments.[87] This included one new clause (now clause 73) making it an offence for an accountable person to allow higher-risk buildings to be occupied in phases in the absence of a completion certificate. The Government explained this was necessary due to the proposed operation of the gateway system to be used during the construction of new higher-risk buildings.[88] The government amendments were passed without division.

The committee also debated a range of opposition amendments. However, only one was moved to a division, where it was defeated by nine votes to six. The amendment, moved by Labour, would have required the housing ombudsman to consult tenants as part of complaints made against social housing providers (as covered in clause 133). Speaking to the amendment, Mike Amesbury, then Shadow Minister for Housing, argued for the importance of engagement with tenants and ensuring their voices were heard. The Government rejected the amendment on the basis that it could result in complainants' confidential information being disclosed to third parties.[89]

Other amendments and discussions at committee stage covered issues including:[90]

- Extending the limitation period initially set out in the bill for claims made under the Defective Premises Act 1972 to 30 years (the Government subsequently amended the bill at report stage to achieve this, as detailed below);
- Requiring consultation with specific stakeholders before statutory instruments were made under the powers of the bill; and
- Requiring assessments of the impact building safety issues were having on access to insurance or mortgages.

Further details on the bill's committee stage can be found in the House of Commons Library briefing, *Building Safety Bill: Committee Stage* (17 January 2022).

[86] UK Parliament website, 'Building Safety Bill: committee stage', accessed 21 January 2022.
[87] House of Commons, *Building Safety Bill: Committee Stage Decisions*, 26 October 2021.
[88] Public Bill Committee, *Building Safety Bill*, 26 October 2021, 15th sitting, col 442.
[89] Public Bill Committee, *Building Safety Bill*, 21 October 2021, 14th sitting, cols 421–7.
[90] House of Commons Library, *Building Safety Bill: Committee Stage*, 17 January 2022.

3.3 Report stage

Report stage was taken in the House of Commons on 19 January 2022.[91]

A number of government amendments, new clauses and schedules were agreed and added to the bill, as set out in the next section.

One opposition new clause, regarding protections for leaseholders against the costs of removing cladding, was negatived on division again as discussed below. The Government stated that it would be introducing amendments to the bill in the House of Lords to cover leaseholder protection, following the recent announcement by Michael Gove.[92]

Some of the main amendments and discussions are summarised below.

3.3.1 Government amendments to the bill

Defective Premises Act 1972: Extending time period for applications

Responding to concerns raised in committee, the Government passed an amendment to further extend the limitation period for seeking compensation under the Defective Premises Act 1972 when a dwelling was "not fit for habitation" on completion.[93] The bill had originally proposed to extend the retrospective claim period in the act from buildings built six years ago to buildings built 15 years ago. However, the Government's amendment extended this to 30 years, meaning it would be available on buildings built from mid-1992 onwards. It also passed an amendment to allow claims to be made a year after the bill's royal assent on buildings where the time period for claims might be about to expire (eg on buildings built around 1992 and 1993). The bill had initially included a 90-day period for such claims.

Speaking to these amendments, Christopher Pincher stated that it had "become clear that a number of buildings affected by cladding and other serious fire safety defects were completed prior to 2007".[94] He also said the Government accepted that the initial 90-day period proposed would be insufficient time to take the necessary advice and to lodge a claim.

The amendments were welcomed by MPs across the House. However, concerns were raised about what range of defects might be covered under the 1972 act and how easy it would be to track down the initial developer

[91] HC *Hansard*, 19 January 2022, cols 360–465.
[92] Department for Levelling Up, Housing and Communities, 'Government sets out new plan to protect leaseholders and make industry pay for the cladding crisis', 10 January 2022.
[93] HC *Hansard*, 19 January 2022, cols 378–80.
[94] ibid, cols 379–80.

or insurer.[95] Mr Pincher said there had been a lot of case law in this area that could be used and referred to. However, he said the latter point might be worth further parliamentary discussions:

> I would say to [Mike Penning (Conservative MP for Hemel Hempstead)] that quite apart from the body of case law that exists with respect to the 1972 act, and quite apart from the fact that even if a company has become defunct directors can still be held liable for the decisions made, as it were, "on their watch", the challenges that he has described are the sorts of things that we will want to discuss in this place and in the other place, across parties, to ensure that such challenges are addressed.[96]

Amendments to special measures regime

The Government introduced a new clause and schedule (now clause 104 and schedule 7) intended to improve the bill's special measures regime, including how it would hold the 'accountable person' to account. Christopher Pincher explained:

> The new clauses and amendments, beginning with new clause 19, provide for the special measures regime to operate in high-risk buildings across all housing tenures. They also ensure that a special measure order cannot be circumvented by a recalcitrant accountable person, including in respect of a situation in which an accountable person sells their interest in the building and tries to avoid being bound by the special measures order.[97]

The changes were supported across the House. However, Matthew Pennycook, the Shadow Minister for Levelling Up, Housing and Communities, queried whether additional payments required from the accountable person could end up being passed on to leaseholders:

> We would be grateful if the minister provided some clarification on those parts of the new schedule that allow for payments to be made by the accountable person to the special measures manager if expenses exceed what can be raised by way of the building safety charge. Will he give a commitment this afternoon that those additional payments will not be able to be charged to leaseholders?[98]

[95] HC *Hansard*, 19 January 2022, cols 378–9.
[96] ibid, col 379.
[97] ibid, col 418.
[98] ibid, col 422.

Christopher Pincher responded that this would only be possible if allowed under the lease:

> [Mr Pennycook] raised the question of special measures and payments made by accountable persons to special measures managers. Special measures managers will receive the building safety charge directly. I can tell him that additional costs can be directly recovered from the accountable person. Whether leaseholders are charged by the accountable person is a matter for the lease. They can only be charged if the lease allows it.[99]

Other government amendments

The Government also passed a number of new clauses and amendments that were more technical. They included:

- Improvements to the operation of the new homes ombudsman scheme, including how it could be utilised in Scotland and Wales.[100]
- Provision to appeal against registration decisions made by the Architects Registration Board.[101]
- Further measures to increase the accountability and duties of the 'accountable person'.[102]

3.3.2 Protecting leaseholders from the costs of removing cladding

Possible government amendments in the House of Lords

One of the primary issues discussed during the debate at report stage was how leaseholders would be protected from the costs of removing dangerous cladding materials.

Christopher Pincher addressed this at the start of the debate, stating that the Government had committed to dealing with the issue and would be pursuing it further, following discussions between parties, in the House of Lords:

> We have brought the bill forward on report because we are clear that it needs to move forward, but we are conscious that further work needs to be done to it and look forward to working with parties from across the House and with interested parties to ensure that it is

[99] HC *Hansard*, 19 January 2022, cols 435–6.
[100] ibid, cols 376–7.
[101] ibid, cols 378–9.
[102] ibid, col 420.

> further improved in the other place.[103]

Pressed on whether this meant the Government would be introducing amendments to the bill, and how far these protections would go, Mr Pincher responded:

> Several hon. members asked whether we intend to bring forward legal protections in the House of Lords. I assure the House that we do. We certainly want to ensure that all leaseholders in medium and high-rise buildings, who live in them or who used to live in them but have had to move out and sub-let because of the situation in which they find themselves, will have put in place the robust legal protections to which [Michael Gove] referred.[104]

Members also urged the Government to ensure parliamentary time was given for consideration of any new amendments on this issue.[105] Christopher Pincher stated that this would be up to the business managers in both Houses and hoped they would ensure appropriate debating time.

Clive Betts, chairman of the House of Commons Levelling Up, Housing and Communities Committee, accepted this, but feared debating time in the Commons would be limited:

> The minister's answer is very helpful because the Lords will have lots of time, and then it is normal for us to have one hour to consider their amendments. The bill needs a full-day debate because the amendments that the Government intend to make, following consultation with industry, are key to resolving the issue. I appreciate what the minister said, and I hope the business managers are as supportive when they come to allocate time.[106]

Labour amendment on leaseholder protection

Despite these assurances, the Labour party moved a proposed new clause to a vote which sought to protect leaseholders against the costs of remediation work and to ensure the work was undertaken quickly. Introducing the amendment, Matthew Pennycook stated:

> That legal protection must be delivered as a matter of urgency and in a way that brings immediate protection for leaseholders, because, as I have said, there is currently nothing, aside from the limited clauses in the bill requiring them to take reasonable steps before they do, to

[103] HC *Hansard*, 19 January 2022, col 373.
[104] ibid, col 403.
[105] ibid, cols 374–5.
[106] ibid, col 375.

> prevent even more freeholders from passing on costs, as we know many are in the process of doing […] As well as providing for the establishment of a building works agency, which we believe remains necessary if the Government are to ensure that the pace of remediation across the country is accelerated and that works are properly carried out and certified, our new clause 3 seeks to provide the maximum legal protection possible for leaseholders facing potential costs to fix historic cladding and non-cladding defects, irrespective of circumstance.[107]

He explained that Labour would be moving the proposed new clause to a division to underline its importance, but hoped that further conversations between parties would result in suitable amendments to the bill being made in the House of Lords:

> We will seek to divide on new clause 3 today, simply to reinforce to the other place the importance we attach to the issue of leaseholder protection, but we do want to work constructively with the Government on this matter in the period ahead, in the light of the change of tone and approach signalled by the secretary of state last week. We hope that the absence of government amendments providing for robust leaseholder protection today simply reflects the fact that they are not yet finalised and that we can expect them to be tabled, perhaps along with an amendment implementing a version of the polluter pays proposal, in the other place in due course.[108]

In response to the concerns over leaseholders currently being pressed to cover costs, Christopher Pincher urged members to highlight these examples to the Government:

> We believe that leaseholders should not be asked to pay anything further until those legal protections are in place, as was raised by several hon. members on both sides of the House. I encourage any hon. member who is aware of demands from freeholders that their leaseholders pay to make me or my officials aware of that demand.[109]

The proposed new clause was defeated on division by 301 votes to 181.[110]

[107] HC *Hansard*, 19 January 2022, cols 385–6.
[108] ibid, col 386.
[109] ibid, col 403.
[110] ibid, cols 407–10.

3.3.3 Other amendments discussed during report stage

Other amendments discussed covered a range of matters, including:

- extending the need for regular electrical safety inspections by leaseholders and social landlords;[111]
- improving protections from forfeiture for non-payment of a building safety charge;[112] and
- ensuring staircases in buildings were safe and appropriate given the size of the building.[113]

The last of these partly related to concerns that have been raised about planning applications for high-rise buildings with only one staircase as a fire escape.[114]

Christopher Pincher did not respond directly to the point about single staircases, however he did refer to the safety of staircases and use of building regulations to address specific issues. He also flagged the role of the building safety regulator:

> The new building safety regime places building safety at the heart of our very consciousness. The building safety regulator will use all the evidence that it gathers to identify emerging issues with the safety and performance of buildings, including staircases, and will make recommendations to ministers where they consider that changes to standards or guidance may be needed.[115]

On electrical safety, Christopher Pincher referred to social housing as already having high standards of electrical safety, but said that the Government would be consulting on electrical safety requirements in the social sector as part of its social housing white paper.[116] Regarding the forfeiture point, the minister concluded:

> We are working across Government to help leaseholders, as I remarked earlier on, and we will consider the [forfeiture] gap and engage with Members across the House and other interested parties as we do so.[117]

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[111] HC *Hansard*, 19 January 2022, cols 425–6.
[112] ibid, cols 422–3.
[113] ibid, cols 424–5 and cols 430–1.
[114] See, for example: Architects Journal, 'RIBA demands fire regs clarity amid single-stair towers controversy', 26 January 2022.
[115] HC *Hansard*, 19 January 2022, cols 434.
[116] Department of Levelling Up, Housing and Communities, *Charter for Social Housing Residents: Social Housing White Paper*, 22 January 2022.
[117] HC *Hansard*, 19 January 2022, col 436.

3.4 Third reading

Opening the debate at third reading of the bill in the House of Commons on 19 January 2022, Christopher Pincher described the bill as the "biggest overhaul of building and fire safety legislation in a generation".[118] He said that he believed the legislation covered present and future concerns, and stressed the Government's commitment to dealing with the issue of building safety as soon as possible:

> There has been progress since the Grenfell Tower tragedy, but our view in Government is that the pace of rectifying high-rise buildings with dangerous and unsafe cladding has not married up to the gravity of the situation, so we must move more effectively and more quickly. That is why we have brought the bill to the House today to complete its remaining stages, so that it can progress smoothly and quickly to the other place where the robust legislative protections that we have outlined in previous statements can be properly and sensibly made. The bill can then come back to this House for proper scrutiny, and I am sure that the business managers—the usual channels—will ensure that appropriate time is made available for it to conclude. We must complete this bill. It has been on the stocks for far too long. Too many people have suffered too much, and we must, through this legislation and through the suite of measures the secretary of state announced in his statement on 10 January, right the wrong that has been done to too many people.[119]

The shadow minister, Matthew Pennycook, stated that Labour welcomed the bill's regulatory reforms and agreed it needed royal assent as soon as possible.[120] However, he expressed disappointment that the leaseholder protections mentioned by the Government were not yet in the bill. He spoke of the "injustice" faced by leaseholders and hoped changes to the bill in the House of Lords would offer full protection and compensation for the costs of remedial works. He stated:

> The secretary of state spoke last week of the injustice of asking leaseholders to pay money they do not have to fix a problem they did not cause. He was absolutely right, but if it is unjust that leaseholders pay in the future, it surely follows that it is unjust that so many have already paid or are being asked to pay now. The Government must look at financial redress and how it might be secured.
>
> When it comes to protecting leaseholders in the future, we forcefully made the case throughout the bill's passage for the maximum legal

[118] HC *Hansard*, 19 January 2022, col 449.
[119] ibid, col 450.
[120] ibid, cols 450–1.

> protection for all those facing potential costs to fix historical defects, irrespective of circumstance.[121]

In addition, he indicated that Labour had concerns about fire safety issues left unresolved by the bill, including the "lack of a national strategy on how to evacuate high-rise buildings to the absence of a requirement to plan for the escape of disabled residents".[122] He also said they were concerned about aspects of the bill's implementation, particularly whether the new building safety regime will be able to function as intended and whether the new building safety regulator would have the capacity to perform all the "complex tasks" assigned to it.

Stephen McPartland (Conservative MP for Stevenage), who has been campaigning on the issue of leaseholder protection and fire safety remediation, also welcomed the bill.[123] He noted that the Government had been negotiating during the bill's progress and believed there had been a "new willingness to work both across party lines and within the governing party to resolve this issue for leaseholders". He accepted it was a difficult and technical issue to resolve and said he understood the need to give the Government more time to get it right.

Similar sentiments were expressed by the chair of the House of Commons Levelling Up, Housing and Communities Committee, Clive Betts.[124] He welcomed the work done on the bill and hoped the further changes announced would fully deal with the issue of leaseholder protection. He reiterated that his committee were also running a short inquiry on the subject:

> We welcome the secretary of state's recent announcement, and we are going to hold a short inquiry—it will be short in how quickly we are going to do it, but not short in the detail—to follow up on it. We join the secretary of state and the minister in wanting to ensure that those responsible for these defects are held to account and that the whole of the construction industry, in its widest sense, including product manufacturers, insurance providers and everyone else, ultimately has to pay for these costs.[125]

The bill passed third reading without a vote.

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[121] HC *Hansard*, 19 January 2022, col 451.
[122] ibid, col 450.
[123] ibid, cols 454–6.
[124] ibid, cols 463–4.
[125] ibid, col 464.

4. Further reading

- House of Commons Levelling Up, Housing and Communities Committee, 'Experts questioned on building safety progress', 19 November 2021; and 'Building safety funding inquiry launched', 19 January 2022
- Department for Levelling Up, Housing and Communities, *Building Safety: The Industry Safety Steering Group's Third Report for the Secretary of State and the Minister for Building Safety*, 10 January 2022
- Health and Safety Executive, 'Building Safety Regulator', accessed 26 January 2022
- Philip Britton, 'The Building Safety Bill: better redress for homeowners? Part 1' and 'Part 2', Oxford University: Housing After Grenfell blog, 22 December 2021

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