

BUILDING SAFETY BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Building Safety Bill as published in Draft on 20 July 2020 (Bill CP 264

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

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Overview of the Bill

- 1 The draft Building Safety Bill takes forward the Government's commitment to fundamental reform of the building safety system. The draft Bill gives effect to policies set out in the Building a Safer Future consultation response, published in April 2020. This detailed how the Government intends to deliver the principles and recommendations of Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety, published in May 2018.
- 2 The draft Bill also acts as the vehicle to introduce a requirement that developers of new build housing belong to a new homes ombudsman and to remove the need for social housing residents to pass through the 'democratic filter' in order to access the Housing Ombudsman.
- 3 The objectives of the draft Bill are to learn the lessons from the Grenfell Tower fire and to remedy the systemic issues identified by Dame Judith Hackitt by strengthening the whole regulatory system for building safety.
- 4 This will be achieved by ensuring there is greater accountability and responsibility for fire and structural safety issues throughout the lifecycle of buildings in scope of the new regulatory regime for building safety.
- 5 This involves establishing a new Building Safety Regulator to oversee the new, more stringent regime for higher-risk buildings and drive improvements in building safety and performance standards in all buildings; ensuring residents have a stronger voice in the system; driving industry culture change and incentivising compliance; and providing a stronger and clearer framework for national oversight of construction products.
- 6 **Part 1** provides an overview of the Bill. The draft Bill contains five parts and eight schedules addressing a range of issues relating to building safety and standards. The draft Bill makes a number of changes to existing legislation, most notably the Building Act 1984.
- 7 **Part 2** establishes a new Building Safety Regulator within the Health and Safety Executive. It also defines the scope of the regime with respect to the definition of risks that it is intended to manage and creates a power to set out in secondary legislation the buildings that are included in the scope of the regime.
- 8 **Part 3** deals with amendments to the Building Act 1984 as it applies to England. It sets out the provisions for the new regulatory regime during the design and construction phase for higher-risk buildings, and provides for the registration of building inspectors and building control approvers to improve competence levels in the building control sector by better regulation.
- 9 **Part 4** is concerned with higher-risk buildings when they are occupied, defines and places duties on the Accountable Person (the dutyholder in occupation) and Building Safety Managers in relation to building safety risks in their building.
- 10 **Part 5** details supplementary information, including provisions to require a new homes ombudsman scheme to be established. It creates powers to make provision about construction products. It allows disciplinary orders made against architects by the Professional Conduct Committee (PCC) of the Architects Registration Board to be listed alongside an architect's entry in the Register of Architects. It also removes the 'democratic filter' which requires social housing residents to refer unresolved complaints to a 'designated person' or wait eight weeks before they can access redress via the Housing Ombudsman.

Policy background

The Grenfell Tower Fire

- 11 On 14 June 2017, a fire broke out at Grenfell Tower, a 24-storey residential tower block in West Kensington, London. Starting on the Tower's fourth floor, the fire quickly spread throughout the building and took 24 hours for firefighters to bring under control. 71 fatalities were confirmed by the coroner – and a further former resident passed away in January 2018. It was the greatest loss of life in a residential fire since the Second World War.
- 12 Following the fire, the Government commissioned the Independent Review of Building Regulations and Fire Safety¹, led by Dame Judith Hackitt. Dame Judith's final report, *Building a Safer Future*, was published on 17 May 2018. The Independent Review found that the system for ensuring fire and structural safety for high-rise residential buildings is not fit for purpose. The Independent Review made 53 recommendations, calling on the Government to:
 - Create a more effective regulatory and accountability framework to provide greater oversight of the building industry;
 - Introduce clearer standards and guidance;
 - Put residents at the heart of a new system of building safety, empowering them with more information, engaging them on how risks are managed in their building and ensuring effective routes for raising and escalating safety concerns; and
 - Help to create a culture change and a more responsible building industry, from design, through to construction, management and refurbishment.
- 13 The Government accepted all the Independent Review's findings and recommendations.
- 14 Proposals for a new system for ensuring fire and structural safety in buildings were outlined in the consultation: *Building a Safer Future: Proposals for Reform of the Building Safety Regulatory System*, published on 6 June 2019.
- 15 The Government's response to the consultation was published on 2 April 2020. At the heart of the proposals, to be legislated for in this Bill, is a more stringent regulatory regime for higher-risk residential buildings.
- 16 The more stringent regulatory regime involves:
 - The introduction of dutyholders that will have accountability and statutory responsibilities for managing risks across the design, construction, and occupation of buildings on an ongoing basis;
 - Gateway points (stop/go decision points) which will provide rigorous inspection of regulatory requirements to help ensure building safety risks are considered during planning, design and construction;
 - Requiring a 'golden thread' of building information to be created, stored and updated through the Gateway process and throughout the building's lifecycle.

¹ Throughout this document, this will be referred to as the 'Independent Review'.

And requiring mandatory reporting to the new Building Safety Regulator of fire and structural safety occurrences which could cause a significant risk to life safety;

- Building registration and a certificate that confirms a building is fit for occupation and provides transparency on the assessment and findings at the time of certification. The Building Assurance Certificate is periodically reviewed;
- Creating an ongoing duty on the Accountable Person (who is the dutyholder in occupation). This duty will be to assess building safety risks, taking all reasonable steps to prevent the occurrence of a major incident in the building as a result of these risks;
- A statutory requirement for the Accountable Person to provide a 'Safety Case Report' which demonstrates how building safety risks are being identified, mitigated and managed on an ongoing basis;
- Requiring the Accountable Person to appoint a competent Building Safety Manager to support them in managing fire and structural safety risks in the building day-to-day;
- Requirements to engage and develop a strong partnership with residents to keep the building safe through greater transparency and effective complaints handling.

17 This more stringent regime for higher-risk buildings is coupled with enhancements to the regulatory regime that applies to all buildings, including:

- Oversight of the building safety and performance system. The Building Safety Regulator will undertake several regulatory functions that will apply to all buildings, working with building control authorities, technical experts and the construction industry;
- The Building Safety Regulator will have a duty to establish a new industry-led committee to advise on industry competence, oversee the longer-term development of the competence frameworks, and driving improvements in levels of competence;
- The Building Safety Regulator will be responsible for oversight of the competence and performance of registered building inspectors and the building control bodies in which they work.

18 The 'policy background' of these notes details the new regime that the clauses in this Bill will give effect to. It explains the interaction between the various elements of the enhanced new regime, as well as outlining other provisions that seek to improve the safety of all buildings.

19 Some of the measures in the Bill, such as the removal of the democratic filter and the new homes ombudsman, sit alongside the original package of reforms proposed in the Independent Review.

20 It should be noted that this section's explanation of the new building safety regime is not organised in the same way as the provisions in the Bill itself. The 'Overview of the Bill' section provides a summary of provisions as they are ordered in the Bill. Detailed, clause-by-clause

explanations of all of the Bill's measures is provided in the 'commentary of provisions' section.

The Building Safety Regulator

- 21 The Bill establishes the Health and Safety Executive as the Building Safety Regulator, to underpin the key regulatory reforms in the new building safety regime.

Functions of the Building Safety Regulator

- 22 The Building Safety Regulator has three broad functions. These are:
- **Implementing the new, more stringent regulatory regime for higher-risk buildings.** This means being the building control authority in respect of building work on higher-risk buildings and overseeing and enforcing the new regime in occupation for higher-risk buildings. Building control authorities are responsible for checking building work to verify that it complies with the building regulations.
 - **Overseeing the safety and performance of all buildings.** This has two key aspects:
 - Overseeing the performance of other building control bodies (local authorities and registered building control approvers (currently known as Approved Inspectors)). This will involve collecting data on the performance of these bodies and having the power to impose sanctions for poor performance.
 - Understanding and advising on existing and emerging building standards and safety risks including advising on changes to regulations, changes to the scope of the regime, commissioning advice on risks in and standards of buildings, and so on.
 - **Assisting and encouraging competence among the built environment industry, and registered building inspectors.** This has two key workstreams:
 - Assisting and encouraging improvement in competence of the built environment sector through several functions, including: establishing and setting strategic direction of the proposed industry-led competence committee, carrying out research and analysis, publishing non-statutory advice and guidance, and so on.
 - Establishing a unified building control profession with competence requirements for registration as a building control professional that will be common across both public sector (local authorities) and private sector (registered building control approvers, currently known as Approved Inspectors).
- 23 As the regulator leading delivery of the new enhanced regime, the Building Safety Regulator will be responsible for all regulatory decisions under the new regime during the design, construction, occupation and refurbishment of higher-risk buildings.
- 24 The Building Safety Regulator will work closely with and take advice from other regulators and relevant experts in making key decisions throughout the lifecycle of a building. It will

have the powers necessary to bring together teams including the Fire and Rescue Services expertise, and local authority expertise (notably local authority building control teams) to assist it in making major regulatory decisions.

Committees

- 25 To assist in carrying out its functions, the Bill gives the Building Safety Regulator the power to establish and maintain committees to advise on building functions. The Bill gives the Building Safety Regulator a duty to establish and maintain three specific committees. These are:
- **Building Advisory Committee.** Replacing the Building Regulations Advisory Committee for England (BRAC), this committee will give advice and information to the Building Safety Regulator about matters connected with most of its building functions.
 - **Committee on industry competence.** This is concerned with the competence of those in the built environment industry. The committee will advise both the Building Safety Regulator and those in the built environment industry about industry competence.
 - **Residents' panel.** This committee will consist of higher-risk building residents and relevant other persons (if any) that the Building Safety Regulator considers appropriate. The Building Safety Regulator must consult this committee before issuing or revising certain guidance related to residents of higher-risk buildings.

A more stringent regime for higher-risk buildings

- 26 One of the Building Safety Regulator's three functions is to implement a more stringent regime for higher-risk buildings.
- 27 The Building Safety Regulator will be responsible for all regulatory decisions under the new regime during the design, construction, occupation and refurbishment of higher-risk buildings.
- 28 The Building Safety Regulator will work closely with and take advice from other regulators and relevant experts in making key decisions throughout the lifecycle of a building. It will have powers necessary to bring together teams including the Fire and Rescue Services expertise, and local authority expertise (notably local authority building control teams) to assist it in making regulatory decisions.
- 29 The Bill gives the Secretary of State the power to amend the definition of a higher-risk building and the definition of building safety risks through affirmative regulations in light of Government research or on the basis of evidence and advice from the Building Safety Regulator.

Higher-risk buildings in design and construction

Dutyholders

- 30 The Bill allows for a new dutyholder regime to be incorporated across the lifecycle of higher-risk buildings. This is based on the principle that the person or entity that creates a building safety risk should, as far as possible, be responsible for managing that risk.
- 31 Many aspects of the regime as described below will be taken forward through secondary legislation. The description here is therefore intended to provide an overall explanation of how the Government intends to use the powers in this Bill.

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- 32 When buildings are designed, constructed or refurbished, those involved in the commissioning, design, construction or refurbishment process will have formal responsibilities for compliance with building regulations. These provisions will apply to all work to which building regulations apply, and these dutyholders will include those appointed under the Construction (Design and Management) Regulations 2015 (CDM 2015). The main dutyholder roles under CDM 2015 are:
- **Client** - Any person or organisation for whom a construction project is carried out, including as part of their business;
 - **Principal Designer** - Appointed by the Client under CDM 2015, when there is more than one contractor working on the building project, to plan, manage, monitor and coordinate the pre-construction phase, when most design work is carried out. The Principal Designer is in control of the pre-construction phase;
 - **Principal Contractor** - Appointed by the Client under CDM 2015, when there is more than one contractor working on the building project, to plan, manage, monitor and co-ordinate the construction phase. The Principal Contractor is in control of the construction phase;
 - **Designer** - Carries on a trade, business or other undertaking in connection with which they prepare or modify a design or instruct any person under their control to prepare or modify a design.
 - **Contractor** - Manages or controls construction work (e.g. building, altering, maintaining or demolishing a building or structure). Anyone who manages this work or directly employs or engages construction workers is a contractor.
- 33 Dutyholder roles may be fulfilled by either an individual or an organisation/legal entity. A dutyholder can hold more than one role in a building project. The Principal Designer will be a Designer and will therefore also have Designer duties; and the Principal Contractor will also be a contractor and will therefore also have contractor duties.
- 34 The Bill also introduces a general duty to govern the way building work is carried out. This is to ensure that dutyholders engage with the requirements and the safety and performance outcomes they are trying to secure, and do not view building regulations as a tick-box exercise.

Industry competence

- 35 The Bill creates powers to prescribe in building regulations competence requirements on the Principal Designer and Principal Contractor, and any prescribed person, and to impose duties on the persons appointing them to ensure they meet the competence requirements. This is to ensure everyone doing design or building work is competent to carry out that work in line with building regulations. Statutory guidance, in the form of an Approved Document, will be provided to support these requirements.
- 36 For higher-risk buildings, the Bill provides powers to prescribe documents to be supplied with building control applications, including a signed declaration from the Client that they have assessed and are content with the competence of the Principal Designer and Principal Contractor.

Gateways

- 37 The amendments to the Building Act 1984 in this Bill, coupled with existing powers both in

the Building Act 1984 and in other legislation, will allow for the creation of a new Gateway regime. This will ensure that building safety risks are considered at each stage of a building's design and construction.

- 38 The new Building Safety Regulator will be able to oversee the building work and ensure appropriate measures are being implemented to manage risk.
- 39 Gateways policy will be implemented through statutory instruments, which will set out the practical details of the Gateways approach. The essentials of each Gateway are detailed below.

Planning Gateway one

- 40 Planning Gateway one utilises the existing process by which planning permission is granted in England. This requirement will be taken forward through secondary legislation and statutory guidance under the Town and Country Planning Act 1990, and this description is provided here for information purposes only.
- 41 This Gateway occurs before dutyholders are required to be in place and its requirements will be fulfilled by those applying for planning permission for developments containing a higher-risk building.
- 42 Information will need to be submitted to the Local Planning Authority with the planning application information that demonstrates fire safety requirements which impact on planning considerations have been considered at an early stage and incorporated into the proposals. This information will take the form of a Fire Statement.
- 43 A new statutory consultee, in the form of the Building Safety Regulator, will be introduced for all planning applications containing a higher-risk building, this will provide specialist fire safety input on the proposals to assist the Local Planning Authority in their decision-making process.
- 44 Where a planning application is not currently required (e.g. because it has been permitted by the General Permitted Development Order 2015), the requirements of Planning Gateway one will not apply, and development proposals will proceed straight to Gateway two.

Gateway two

- 45 Gateway two occurs prior to construction work beginning. It bolsters the current building control 'deposit of full plans' stage where a dutyholder provides a building control body with their full design intention.
- 46 Gateway two provides a 'hard stop' where construction cannot begin until the Building Safety Regulator is satisfied that the dutyholder's design meets the functional requirements of the building regulations and does not contain any unrealistic safety management expectations.
- 47 Dutyholders will be required to submit key information to the Building Safety Regulator to demonstrate how the building, once built, will comply with the requirements of building regulations. Design decisions in relation to fire and structural safety should be well considered and justified, to ensure they will work effectively during occupation.

Gateway three

- 48 Gateway three is at the current completion/final certificate phase, where building work has finished, and the building control body assesses whether the work has been carried out in accordance with the building regulations.
- 49 At this point all prescribed documents and information (the golden thread) must be handed over to the Accountable Person. Dutyholders will be required to submit to the Building Safety Regulator prescribed documents and information on the final, as-built building.

- 50 Once the Building Safety Regulator is satisfied, they will issue a completion certificate.

Golden thread

- 51 The Bill includes provisions that will help create a golden thread of information. The intention of the clauses in the Bill are to ensure that the right people have the right information at the right time to ensure buildings are safe and building safety risks are managed throughout the building's lifecycle.
- 52 This information will be held digitally and will ensure that the original design intent and any subsequent changes to the building are captured, preserved and used to support safety improvements.
- 53 For new builds the dutyholders must start to collect this information during the design and construction process. Once construction is complete, the information must be handed over to the Accountable Person.

Mandatory occurrence reporting

- 54 Provisions are included in the Bill that will allow for a Mandatory Occurrence Reporting System to be established. This involves the obligatory reporting of structural and fire safety occurrences which could cause a significant risk to life safety to the Building Safety Regulator.
- 55 Dutyholders in design and construction are required to establish a framework for mandatory occurrence reporting that will enable workers on-site to report potential occurrences.
- 56 Mandatory occurrence reporting also continues in occupation. The Accountable Person must set up a similar framework, and the Building Safety Manager will be required to report occurrences to the Building Safety Regulator.
- 57 The Bill also includes measures requiring the Building Safety Regulator to publish aggregated information it has received from dutyholders as part of the mandatory occurrence reporting regime on an annual basis.

Higher-risk buildings in occupation

The Accountable Person and Building Assurance Certificate

- 58 The Accountable Person is the dutyholder during occupation. They may be an individual, partnership or corporate body and there may be more than one Accountable Person for a building.
- 59 The Bill makes the Accountable Person responsible for registering the building and applying for a Building Assurance Certificate.
- 60 Existing buildings that are already occupied will also need to be registered, and existing buildings which are unoccupied at the introduction of the new regime will have to be registered by the point the building is occupied.
- 61 Once the building is registered, the Accountable Person must also apply to the Building Safety Regulator for a Building Assurance Certificate. The Building Safety Regulator will issue a Building Assurance Certificate if it is satisfied that the Accountable Person is complying with meeting the statutory obligations placed on them.
- 62 The Accountable Person will be required to comply with all the statutory obligations on an ongoing basis. The Bill includes provisions allowing the Building Safety Regulator to take enforcement action for non-compliance.
- 63 One of the statutory obligations detailed in the Bill is for the most recent issue of the certificate

to be displayed in a prominent position in the building.

Building Safety Manager

- 64 Another statutory obligation is for the Accountable Person to appoint a Building Safety Manager, who must have the organisational capability and relevant skills, knowledge, experience and behaviours.
- 65 The Accountable Person must notify the Building Safety Regulator who has the power to veto the appointment of the Building Safety Manager.
- 66 The Building Safety Manager can be an individual or organisation whose principal role is to support the Accountable Person in the day-to-day management of fire and structural safety in the building. Responsibilities include:
- Complying with their own statutory duties as set out in the Bill;
 - Managing the building in accordance with the Safety Case Report for the building and ensuring that the requirements of the Building Assurance Certificate are complied with;
 - Keeping informed and co-operating with the managing agents (if any) of the building (if different) about safety measures and works;
 - Complying with all directions given and statutory notices issued by the Building Safety Regulator;
 - Co-operating with other occupiers or owners of the building, including any other person acting as the Responsible Person under the Fire Safety Order, to secure an integrated approach to managing building safety risks.

Duty to manage risks and safety cases

- 67 The Bill creates an ongoing duty on the Accountable Person to assess the building safety risks relating to their building, and to take all reasonable steps to prevent the occurrence, and control the impact, of a major incident resulting from those building safety risks in or around the building.
- 68 The Accountable Person will need to demonstrate how they are meeting this ongoing duty through a Safety Case Report which they will be required to keep up to date.
- 69 The Bill also includes a provision stating that the Accountable Person must review the risk assessments on which the Safety Case Report is based, and revise the report, if they suspect the report is no longer valid or they are requested to do so by the Building Safety Regulator.
- 70 The Safety Case Report is the document that goes to the Building Safety Regulator to make the 'claim' of and argument for resident safety. It is essentially the response to the exam question: **Can you identify the building safety risks in your building, and show me how you manage these on an ongoing basis, as far as you can, so that it is safe?**
- 71 The Safety Case Report summarises all the key components of the safety case with references to supporting documentation. It is supported by the wider safety case which refers to the totality of the building safety information and includes all the evidence that supports how these building safety risks are being managed, contained within the golden thread of information.
- 72 The building's Safety Case Report will need to be submitted by the Accountable Person either

as part of the process for issuing a Building Assurance Certificate or on request from the Building Safety Regulator.

- 73 On assessment, if the Building Safety Regulator is of the opinion that the Safety Case Report does not demonstrate that the ongoing duty is met, they will enter into a dialogue with the Accountable Person as to what further measures need to be included in their safety arrangements and evidenced within the Safety Case Report.
- 74 Where agreement cannot be reached, the Building Safety Regulator will be able to issue a compliance notice, setting out specific actions the Accountable Person must take in order to ensure the duty is met. Continued failure to comply with the notice means there is continued breach of the statutory obligation and criminal proceedings may ensue.

Residents

- 75 The Bill also places statutory obligations on the Accountable Person that will help to promote a strong partnership between residents and the Building Safety Manager. These obligations cover engagement and participation, complaints handling, information provision and the role of residents in helping keep the building safe.
- 76 One such obligation is to produce and keep up to date a Residents' Engagement Strategy setting out how the obligations will be delivered in practice, for example, how they will run inclusive opportunities to participate in decision-making and what the process will be for residents to get access to all the safety information they are entitled to or to raise a complaint when things go wrong.
- 77 Alongside this, residents will also have clear legal responsibilities to keep in repair and proper working order any relevant resident's items, take reasonable steps to avoid damaging any relevant safety item, and comply with a request made by the Accountable Person in connection with their duty to assess safety risks in the building and take steps to prevent serious harm.

Enforcement and sanctions

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

Toughened existing powers

- 79 The Bill extends time limits in Sections 35 and 36 of the Building Act 1984 to apply formal enforcement powers in relation to non-compliance with building regulations. This will extend the time limit for prosecution from two years to ten years, and from one year to ten years for section 36 notices, which require correction of non-compliant work.

New powers

- 80 The Building Safety Regulator will have powers to prosecute all offences in the Bill and the Building Act 1984, including section 35. In addition, for all offences in the Building Act 1984 and the new legislation, where an offence is committed by a corporate body with the consent or connivance of a director, manager etc, or is attributable to their neglect, that person will be liable to be prosecuted as well as the corporate body.
- 81 The Building Safety Regulator will also be able to issue compliance notices (requiring issues of non-compliance to be rectified by a set date) and, in design and construction, stop notices (requiring work to be halted until serious non-compliance is addressed).
- 82 Failure to comply with compliance and stop notices will be a criminal offence, with a maximum penalty of up to two years in prison and an unlimited fine.

- 83 The Bill includes powers of entry to gather evidence for compliance action. A warrant from a magistrates' court will be required for domestic premises, or where force needs to be used to enter business premises.
- 84 The Building Safety Regulator will also hold to account building control bodies, e.g. where they haven't registered or are performing below the set standard, and will be able to suspend or remove inspectors from the register and to prosecute where necessary.
- 85 The Bill also includes powers for the Building Safety Regulator to appoint a Special Measures Manager to replace the Accountable Person or Building Safety Manager where there are serious failures endangering the life safety of residents in the building.

Building control reform

- 86 The Bill includes provisions to improve competence levels and accountability in the building control sector by creating a unified professional and regulatory structure for building control, changing and modernising the existing legislative framework.
- 87 This is achieved through proposals for the Building Safety Regulator to establish and maintain a register of building inspectors (individuals) and building control approvers (either organisations or individuals). The changes introduced by the Bill provisions are reflected in new titles for individuals and organisations.
- 88 Under the provisions being introduced in this Bill, individuals and organisations currently known as 'Approved Inspectors' who wish to continue undertaking building control work will need to register as 'building control approvers'.
- 89 The role of a registered building inspector being introduced in this Bill is new. A registered building inspector is an individual who will be able to provide advice to local authorities or registered building control approvers overseeing building work. Many inspectors in local authorities and Approved Inspectors are expected transition to this role.
- 90 The Bill also removes the ability for a person carrying out any building work for higher-risk buildings to choose their own building control body.
- 91 Additional amendments to existing legislation will:
- Give powers and obligations to the local authority, registered building control approver and person carrying out the work to cancel an initial notice when the works on the notice becomes high risk building work;
 - Amend the existing powers and obligations for the local authorities, registered building control approver and the person carrying out the work to cancel initial notices for non-higher-risk building work, in prescribed circumstances;
 - Giving powers to the Building Safety Regulator to be able to enforce building regulations when non-higher-risk building work becomes high risk;
 - Allow the Secretary of State to make regulations as to how the new regulatory regime for higher-risk buildings will be applied (if at all) to a public body designated under section 5 and 54 of the Building Act 1984;
 - Enable a local authority and the Building Safety Regulator to seek information from a registered building control approver where it has ceased to supervise a project;

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

Other provisions

Construction products

- 92 The current regulatory framework for construction products, derived from the EU Construction Products Regulation 2011 (EU No 305/2011), covers some of the products placed on the UK market. This framework only applies to products where an EU harmonised standard has been adopted or a European Technical Assessment applies - some 400 product families. The Bill provides powers so that all construction products marketed in the UK fall under a regulatory regime, allowing them to be withdrawn from the market if they present a risk.
- 93 The Bill creates powers to make provision for regulation of all construction products placed on the UK market. It creates powers for the regulation of “designated products” which covers the same products regulated by the EU framework.
- 94 The Bill creates the concept of a “safety critical product” and gives the Secretary of State the power to make regulations to place safety critical products on a statutory list. The Bill takes powers for the regulation of such products.
- 95 Where products do not fall under the existing regulatory regime and are not included on the statutory list of safety critical products, the Bill takes powers to make regulations requiring manufacturers to ensure that the products they supply are safe.
- 96 The Bill creates powers to create new civil penalties and criminal offences for breach of the new regulations. The existing regime is mainly enforced locally by Trading Standards. The Bill will give enforcement powers for all the existing and new parts of the regulatory regime to the Secretary of State, which will enable us to build up national oversight in central government. Trading Standards’ enforcement powers will be extended under the existing regime to the new regulatory requirements.
- 97 The Bill creates powers to make regulations allowing the sharing of information about construction products between regulators, for example, between the new national construction products regulatory role, the Building Safety Regulator and local building control.
- 98 Powers will also be taken in the Bill to amend the existing regulatory regime, allowing this part of the regime to be amended in the future.

Improving the competence of architects

- 99 The Bill introduces a power for the Architects Registration Board (ARB) to monitor competence of the architects on their Register. In order to use the title ‘architect’, a person

must be on the Architects Registration Board's register. Currently, architects are not required to undertake Continuing Professional Development (CPD) or any competence checks throughout their career.

100 This power will extend to all architects on the Register. The Architects Registration Board will set the criteria, in conjunction with other relevant bodies (such as the Royal Institute of British Architects) and after consultation with the sector. If an architect does not meet these requirements or is found to be guilty of professional misconduct or serious professional incompetence with regards to the criteria, the Architects Registration Board will have the power to remove them from the Register.

101 Architects will be able to apply to the Architects Registration Board for time extensions if they are unable to meet the prescribed criteria by the set date. If they do not meet the criteria by the extended date, they will be removed from the Register.

102 Currently, if an architect is sanctioned, their ruling is listed on the Architects Registration Board website. The Bill amends the Architects Act 1997 to allow disciplinary orders to be listed alongside the architect's name on the Register, to increase transparency for consumers wishing to procure architectural services. The Architects Registration Board will create rules to determine the length of time until a disciplinary order is "spent" and can be removed from the Register.

103 The Bill will allow the Architects Registration Board to expand their list of chargeable services, as the current list is limited and does not cover the full range of services provided by the Architects Registration Board. This would be on a cost-recovery basis, as the Architects Registration Board is self-funded.

Removal of the democratic filter

104 The Bill includes provisions that enable social housing complainants to escalate a complaint to the Housing Ombudsman service directly, once they have completed their landlord's complaints process, thereby increasing the speed of redress.

105 This is achieved by removing the existing requirement ('the democratic filter') for social housing residents to make their complaint via a 'designated person' that is, an MP, Councillor or recognised tenant panel or wait eight weeks after the end of their landlords' complaints process.

New homes ombudsman scheme

106 The Bill includes provisions that allow relevant owners of new build homes to escalate complaints to the new homes ombudsman scheme. The Secretary of State must make arrangements for a scheme to be available for complaints against members of the scheme to be investigated and determined by an independent person.

107 The new homes ombudsman scheme must meet minimum requirements set out in the Bill. The Bill includes provision for the Secretary of State to provide financial assistance to the new homes ombudsman scheme.

108 The Bill introduces a power to require developers, or developers of a specified description, to become, and remain, members of the new homes ombudsman and make provision for sanctions should developers breach requirements. Developers who receive a sanction will be able to appeal that decision. The Bill includes the provision for the Secretary of State to make payments to enforcement bodies to investigate and impose sanctions in respect of breaches by a developer.

109 The Bill introduces a power to issue or approve a code of practice for the conduct and

workmanship expected of members of the new homes ombudsman scheme. Where a code of practice is issued or approved by the Secretary of State, the new homes ombudsman scheme, (which will include provision about the matters in relation to which complaints about members may be made under the scheme) must include provision for complaints about non-compliance with the code of practice.

Structure of these notes

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

Effect

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

Background

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

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

Proposed use of power

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

Examples

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

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

Legal background

Building Safety Regulator

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

Higher-risk buildings in design and construction

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

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

These Explanatory Notes relate to the Building Safety Bill as published in Draft on 20 July 2020 (Bill CP 264)

Higher-risk buildings in occupation

120 Unlike the measures in design and construction, the more stringent building safety regime for higher-risk buildings in occupation is being created from scratch and therefore does not require substantial amendments to current legislation.

121 The Landlord and Tenant Act 1985 is amended to imply terms into long leases of dwellings in higher-rise buildings so that building safety measures, the associated costs and the related charges that may be passed onto leaseholders will not be reliant on the service and service charge provisions in each lease. Under the new statutory implied terms, the landlord makes a commitment to the leaseholder to carry out the necessary measures, to apply for any financial support available, and to observe the statutory requirements in relation to raising charges; and the leaseholder makes a commitment to the landlord pay a fair share of reasonable charges and co-operate with the building safety regime.

Other provisions

Architects

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

Democratic filter

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

Construction products

124 Regulation of construction products in the EU is under the provisions of the EU Construction Product Regulations (305/2011). This will be brought into UK law immediately following Transition Day by the European Union (Withdrawal) Act 2018 and amended for the UK by the Construction Products (Amendment, etc) (EU Exit) regulations 2019 (2019/465) (EU Exit Regulations).

125 This sets out mandatory requirements for construction products where an EU harmonised standard exists (or a European Technical Assessment) and ensures that in the UK market the same products perform to the same standard. In the UK these are “designated products” (or subject to a UK Technical Assessment) and the Secretary of State has powers to add to or amend designation.

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

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

- Architects Act 1997;
- Building Act 1984;
- The Building Regulations 2010;
- The Building (Approved Inspectors etc.) Regulations 2010;
- The Building (Local Authority Charges) Regulations 2010;
- Construction (Design and Management) Regulations 2015;

- The Construction Product Regulations 2013 (2013/1387)
- The Construction Products (Amendment, etc) (EU) Regulations 2019 (2019/465)
- EU Construction Product Regulations EU No 305/2011;
- Freedom of Information Act 2000;
- Health and Safety at Work etc. Act 1974;
- Housing Act 1996;
- Landlord and Tenant Act 1985;
- Parliamentary Commissioner Act 1967;
- Sustainable and Secure Buildings Act 2004.

Territorial extent and application

- 128 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.
- 129 Clause 117 sets out the territorial extent of the Bill- the jurisdictions which the Bill forms part of the law of.
- 130 The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.
- 131 The Bill extends to England and Wales only, with the exception of:
- 132 Part 1, which contains an overview of the Bill and extends to the whole of the UK,
- 133 Part 5, which extends to the whole of the UK other than amending or repealing provisions (as to which see below) and clause 114, and which contains:
- Technical clauses (Clauses 115-119);
 - Clause 114, which creates liability for directors etc of corporate bodies (in relation to offences in Parts 2 and 4 of the Bill, and which extends to England and Wales only);
 - Clauses introducing a statutory requirement for developers to belong to a New Homes Ombudsman (Clauses 106-109 and see also Schedule 7);
 - A clause relating to the provision of a legislative framework to strengthen the oversight of the existing construction products regulatory regime (Clause 110 and see also Schedule 8);
 - Clauses amending the Architects Act 1997 to allow the Architects Registration Board (ARB) to monitor the competence of architects and to charge fees for services which it provides (Clauses 111-112); and
 - A clause amending the Housing Act 1996 in relation to the process for bringing complaints to a housing ombudsman which has the same extent as the provisions in the Housing Act 1996 (clause 113).
- 134 Throughout the Bill, clauses which amend, or repeal provisions have the same extent as the provision they amend or repeal. So, for example, Schedule 1, which amends the Health and Safety at Work etc. Act 1974 extends to England, Wales and Scotland.
- 135 In terms of the Bill's application, the Bill applies in the main to England only, but with the following exceptions:
- The Part 5 provisions as above relating to construction products, architects and the creation of the new homes ombudsman, which apply to the whole of the UK;
 - Paragraph 8(a) of schedule 1 (amendments to the Health and Safety at Work etc. Act 1974) will apply in England and Wales and Scotland;
 - In addition, Schedule 2, paragraphs 1-3 (Authorised officers: investigatory

powers) powers of entry)) will apply in England and Wales.

- 136 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the Senedd or the Northern Ireland Assembly without the consent of the legislature concerned.
- 137 The subject matter of the provisions of the Bill in Part 5, in relation to the new homes ombudsman scheme, is housing which is a devolved matter in Scotland, Wales and Northern Ireland. A legislative consent motion will therefore be sought from the Scottish Parliament, Senedd and Northern Irish Assembly.
- 138 The subject matter of the provisions of the Bill in Part 5, in relation to the regulation of construction products, is a reserved matter. There is provision made for information sharing, which currently includes the Scottish Ministers, the Welsh Ministers and a Department for Northern Ireland. The detail of this has not yet been worked out, but as it may impact on the legislative competence of these bodies, legislative consent motions may need to be sought from the Scottish Parliament, Senedd and Northern Irish Assembly.
- 139 Whilst Part 1 extends to the whole of the UK, it has no operative application as it simply contains signposting provisions to the rest of the bill. However, for completeness, when we engage in the legislative consent process with relation to clauses 106-109 in Part 5, we will include reference to this Part. Technically speaking, the new homes ombudsman provisions in Part 5 do not relate to reserved matters and it would be within the competence of the devolved administrations to make provision in their legislation along the same lines, ie signposting to Part 5 devolved provisions.
- 140 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Part 1: Introduction

Clause 1: Overview of Act

Effect

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

Background

142 This is a new provision. However, it does highlight that this Bill amends the Building Act 1984.

Part 2: The regulator and its functions

Chapter 1: The regulator and its general functions

Clause 2: The building safety regulator

Effect

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

Background

144 This is a new provision.

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

Clause 3: The regulator's objectives

Effect

146 Clause 3 sets out the objectives that the Health and Safety Executive must follow when exercising its functions as the Building Safety Regulator (such functions are referred to as building functions).

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

148 The second objective is to improve the standard of buildings. The Health and Safety Executive could fulfil this objective by taking steps that either improve the quality of a standard or lead to more consistent compliance with an existing standard. A standard is defined in clause 35 and can cover the requirements of the building regulations, guidance in Approved Documents, as well as non-legislative British Standards set by the British Standards Institute, and standards recognised within industry.

149 When undertaking a specific activity, the Building Safety Regulator may consider that only one objective is relevant, or that one objective should carry more weight than the other.

150 The Building Safety Regulator will not be responsible directly for the construction or management of buildings - this Bill, alongside the Building Act 1984 and building regulations, assigns clear duties in respect of those matters. For example, the Accountable Person and Building Safety Manager are primarily responsible for ensuring that a higher-risk building is managed safely when occupied (see later clauses). The intention of the statutory objective is to ensure that the Health and Safety Executive exercises its regulatory functions with the aim of securing safety and improving standards.

151 Clause 3 further defines the Building Safety Regulator's "building functions" as:

- Building functions provided for in this Bill, the Building Act 1984, and regulations made under those two pieces of legislation;
- Functions of the Health and Safety Executive defined as building functions by regulations made under this clause;
- Functions of the Health and Safety Executive provided for under the Health and Safety at Work etc Act 1974 that related directly to the other building functions (such as new section 11A Health and Safety at Work etc. Act 1974, which enables the Health and Safety Executive to make administrative arrangements to deliver its building functions).

152 Building functions are subject to the Building Safety Regulator's objectives, would form part of the Building Safety Regulator's strategic plan (see clause 23), can be subject to powers to share information and duties to cooperate (see clause 32 and schedule 3) and are subject to the regular review of the regulatory system (see clause 30).

Background

153 Clause 3 is a new provision.

Example 1

When making proposals to the Secretary of State for changes to the building regulations, the Building Safety Regulator could act in line with its objectives by suggesting changes to the regulations to seek to resolve a recurring problem with standards of buildings, and so improve the standards of buildings by acting to ensure that such problems are tackled.

Example 2

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

Example 3

Where dutyholders do not respond positively to encouragement and information, active enforcement of the new regime could also help meet the objective to secure safety.

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

Effect

154 Clause 4 requires the Building Safety Regulator to assist and encourage those responsible for the safe construction and management of higher-risk buildings (see clause 19), as well as residents in those buildings, to secure the safety of people in or around those buildings in relation to building safety risks (see clause 16). This clause should be read alongside Part 3 and Part 4 of the Bill.

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

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

Background

157 This is a new provision.

Example 1

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

Example 2

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

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

Effect

158 Clause 5 requires the Building Safety Regulator to monitor the safety of people in buildings and the standard of buildings, on an ongoing basis. Once the Building Safety Regulator has undertaken a review of the safety and standard of buildings, it must exercise its general functions as it considers appropriate in light of the findings of the review. The general functions are the Building Safety Regulator's functions under Part 2 of the Bill; section 13A of the Building Act 1984 (inserted by this Bill); and its functions under the Health and Safety at Work etc. Act 1974, in relation to building functions.

Background

159 This is a new provision.

Example 1

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

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

Effect

160 Clause 6 provides that the Building Safety Regulator must provide assistance and encouragement to persons in the built environment industry and to registered building inspectors to facilitate improvement of competence of organisations and individuals in the industry, or members of the profession.

Background

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

Example 1: Functions in relation to industry competence

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

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

The Building Safety Regulator may work with the competence committee to share its insights from reviewing Gateway two applications containing evidence of the competence of the Principal Contractor and Principal Designer, to improve the guidance to industry.

Example 2: Functions in relation to registered building inspectors

Under this duty the Building Safety Regulator can develop a strategy to increase the

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

Clause 7: Proposals and consultation relating to regulations

Effect

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

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

164 Clause 7 ensures that there will always be consultation before the making of regulations. The Building Safety Regulator must consult on proposed regulations before recommending them to the Secretary of State, and the Secretary of State must consult before making regulations which have not been proposed by the Building Safety Regulator.

165 This clause applies to regulations made under Parts 2 and 4 of the Bill, with the exception of regulations that change the scope of the higher-risk regime (made under clause 16, clause 19 and clause 20), where there are specific procedures in place for the making of regulations.

Background

166 Clause 7 is a new provision which applies exclusively to regulations made under this Bill. However, it follows the same principles as section 11(3) and section 50 of the Health and Safety at Work etc. Act 1974.

167 The Bill provides for an equivalent provision (new section 13A Building Act 1984) at schedule 5, paragraph 12 in relation to building regulations which are made under the Building Act 1984, including in relation to regulations made under the new provisions inserted into the Building Act 1984 by Part 3 of this Bill.

Example 1

If the Building Safety Regulator wishes to propose amendments to regulations to the Secretary of State setting out changes to the content of Safety Case Reports for higher-risk buildings under clause 74 in relation to fire safety, the Building Safety Regulator would first need to consult.

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

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

Effect

168 Clause 8 requires the Building Safety Regulator to establish and operate a system for the voluntary reporting of information about building safety. The clause also specifies that the Building Safety Regulator may alternatively make arrangements for a person to operate such a system. This means that the Building Safety Regulator can either carry out the function itself or arrange for another party to do so. The current proposal is for this function to be fulfilled through the expansion of the Confidential Reporting on Structural Safety scheme (CROSS), which will be extended to include fire safety, in addition to structural safety, within its remit.

Background

169 This is a new provision. Recommendation 1.4 of the Independent Review sets out the recommendation that the existing Confidential Reporting on Structural Safety scheme be extended to cover a wider range of engineering concerns.

Example 1

Safety occurrences which cause a significant risk to life safety in higher-risk buildings should be reported through the mandatory occurrence reporting system. Occurrences of a lower risk level and in other buildings are not mandatory to report but may still be of value to the Building Safety Regulator and industry in developing a broader understanding of safety concerns. Occurrences which fall into this latter category will be captured as part of the voluntary system set up under this clause.

Chapter 2: Committees

Clause 9: Building Advisory Committee

Effect

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

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

Background

172 This is a new provision.

173 The Independent Review recommended that the Government should create a new structure to validate and assure guidance, oversee the performance of the built environment sector and provide expert advice.

Example 1

The Building Safety Regulator exercises its duty and sets up an advisory committee called the Building Advisory Committee. In carrying out its general functions, the Building Safety Regulator identifies an emerging issue relating to the safety of buildings in Part B of the guidance to the Building Regulations which requires

consideration and potentially some form of action. In assessing the issue, the Building Safety Regulator asks the Building Advisory Committee for advice on the matter. The Building Advisory Committee investigates the issue and provides the Building Safety Regulator with expert advice. The Building Safety Regulator considers this technical advice and uses this information to help make an informed recommendation to improve Part B guidance to the Building Regulations.

Clause 10: Committee on industry competence

Effect

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

Background

- 177 This is a new provision that will require Building Safety Regulator to establish an industry competence committee with the prescribed functions. This is in addition to the general powers to set up committees relating to building functions and pay committee members under new section 11A (3) of the Health and Safety at Work etc. Act 1974.
- 178 The Independent Review identified that the current landscape for ensuring competence is fragmented, complex and inconsistent - different disciplines have various routes for assessing competence which are not always clear or consistent. The Review recommended that the built environment industry should work together to develop proposals for a system for competence oversight, which include the establishment of an industry-led committee within the Building Safety Regulator to ensure a consistent approach to improving competence across industry.

Example 1: Advising the Building Safety Regulator

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

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

actors in the system to help them determine competence, and to signpost schemes or registers which the committee has assessed as meeting the overarching competence framework standard.

Example 2: Working with stakeholders

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

Example 3: Research and analysis

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

Clause 11: Residents' panel

Effect

179 Clause 11 requires the Building Safety Regulator to establish a committee known as the residents' panel. The purpose of the panel is to ensure that residents have a voice in the work of the Building Safety Regulator, and the Building Safety Regulator has a broad power to consult the residents' panel on any of its functions which impact the residents of higher-risk buildings.

180 The panel must include residents, and may also have members from the following groups: owners of flats in higher-risk buildings who are not occupying the property (who could, for example, be impacted by expenses relating to the higher-risk building); and groups or organisations which are representative of residents and/or non-occupying leaseholder owners, advocate for them or support them.

181 The Bill also requires that the Building Safety Regulator must consult the residents' panel on certain matters which we expect would be of particular interest and importance for residents of higher-risk buildings, specifically:

- Under this clause, the residents' panel must be consulted on guidance to residents on their rights and obligations under the new regulatory regime for higher-risk buildings in occupation;
- Under this clause, the residents' panel must be consulted on guidance relating to any duties under clause 80 (Provision of information etc. to the regulator, residents and other persons) where the guidance is about information provision to residents.;
- Under this clause, the residents' panel must be consulted on guidance relating to clause 82 (residents engagement), clause 84 (Accountable Person's complains procedure), clause 86 (duties on residents) or regulations made under any of those clauses.
- Clause 23 requires that the Building Safety Regulator must consult the residents' panel on its strategic plan; and

- Clause 85 requires that the regulator consult the residents' panel on its system for dealing with complaints from residents that are escalated to the Building Safety Regulator.

182 Clause 11 should also be read alongside clause 26, which requires the Building Safety Regulator to publish a statement regularly on how it engages with the residents' panel, in addition to any other wider engagement with residents and related groups.

Background

183 This is a new provision. The provision reflects that the Independent Review found that trust in the building regulation and fire safety system needs to be rebuilt, with resident involvement and engagement placed at the heart of the new system.

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

Clause 12: Committees: power to amend or repeal

Effect

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

Background

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

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

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

Example 1

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

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

- In relation to the Building Advisory Committee, the regulation-making

power could be utilised once the Building Safety Regulator and industry have matured, such that their respective roles in developing proposals for guidance and regulations need adapting following experience.

- In relation to the committee on industry competence, the Government considers that the committee's role is essential in the coming years to ensure the delivery of the Independent Review's recommendations on industry competence. However, the long-term objective of the policy is that the built environment industry will mature to the point where it can take on greater responsibility for its own standards-setting and competence oversight. Therefore, the eventual repeal of the committee on industry competence provisions could be an indication of success.
- In relation to the residents' panel, the provisions would need to be reviewed if there are major changes in scope. For example, if hospitals were brought into scope, consideration would be given as to whether to extend the provisions to include engagement with patients and NHS staff, and representatives of those groups. In those circumstances the consequential amendments power might also be used to amend clause 26.

Chapter 3: Staff etc

Clause 13 Local authorities and fire and rescue authorities: provision of assistance etc to regulator; and Clause 14 Provision of assistance etc: supplementary

Effect

189 Clause 13 enables the Building Safety Regulator to call on assistance from local authorities and Fire and Rescue Authorities when regulating higher-risk buildings. It ensures that local authorities and Fire and Rescue Authorities have the legal power to provide assistance requested by the Building Safety Regulator.

190 These provisions also extend to the provision of local authority support to the Building Safety Regulator, when the Building Safety Regulator acts as building control authority for a non-higher-risk building (notably in a mixed development including a higher-risk building).

191 Clause 13 enables the Building Safety Regulator to direct a local authority or Fire and Rescue Authority to provide support requested under clause 13. Clause 13 includes safeguards, which are intended to ensure that direction of these independent bodies (who are subject to democratic local accountability) is not undertaken lightly.

- Before making a direction, the Building Safety Regulator must first make a formal, written request to the local authority or Fire and Rescue Authority setting out the reason why the assistance is being requested. The local authority or Fire and Rescue Authority must be given the opportunity to give reasons why it should not be required to provide the assistance.
- If the local authority or Fire and Rescue Authority does not undertake the requested activity, the Building Safety Regulator may direct the relevant authority to do so. However, the Building Safety Regulator must have considered

any reasons provided by the authority for not undertaking the activity, still consider it expedient for the authority to undertake the activity, and have secured the consent of the Secretary of State for the direction.

192 Clause 14 makes further provisions in relation to the assistance to be provided by local authorities and Fire and Rescue Authorities. Clause 14 enables appropriate funding to be provided for the activity requested from local authorities and Fire and Rescue Authorities, and any activity necessary to support this.

193 Clause 14 achieves this by enabling funding to be provided both through grants from the Secretary of State and enabling regulations to be made setting out how the Building Safety Regulator would reimburse local authorities and Fire and Rescue Authorities for costs incurred in supporting it.

194 Clause 14 places a duty on Fire and Rescue Authorities and local authorities to use competent staff when supporting the Building Safety Regulator.

195 Clause 14 also enables the Secretary of State to make regulations in respect of the provision of support by local authorities and Fire and Rescue Authorities to the Building Safety Regulator, at the request or direction of the Building Safety Regulator.

Background

196 Clause 13 and clause 14 are new provisions.

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

Example 1

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

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

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

It is expected that the Building Safety Regulator will work cooperatively with Fire and Rescue Authorities and local authorities to secure support from them. If the local authority or Fire and Rescue Authority in the area where the higher-risk building is located is unable to provide support, the Building Safety Regulator could seek support from other Fire and Rescue Authorities and local authorities whose capability is less stretched, or from the private sector.

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

Clause 15: Section 13: guidance

Effect

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

Background

199 This is a new provision.

Example 1: Competence

The guidance could set out what type of competence (skills, knowledge, experience and behaviours) should be demonstrated by local authority building control specialists, when supporting the Building Safety Regulator's work on any complex and higher-risk construction projects, and in order to comply with the requirements around competence in clause 14.

Chapter 4: Building safety risks

Clause 16: Meaning of "Building safety risk"

Effect

200 The new regulatory regime will regulate 'building safety risks' in higher-risk buildings. These are the risks that dutyholders will manage in design and construction, and in occupation via the safety case, in order to prevent a major incident (serious injury or death to a significant number of people in a single event).

201 Clause 16 defines those 'building safety risks' as risks to the safety of persons in or about buildings with regards to risks arising from the building resulting from the occurrence of: fire, structural failure and, any other risk that may be prescribed by regulations in the future. For example, if a fire in a building escaped and spread beyond the compartment of origin, it is more likely to cause a major incident.

202 As what might be considered a 'building safety risk' may change over time, this clause

provides a power for the Secretary of State to define, in regulations, new 'building safety risks' which once prescribed would then need to be regulated in higher-risk buildings. The clause will therefore allow the future scope of the regulatory regime to remain flexible.

- 203 The clause is drafted to capture risks inside and outside the building such as fire on the external wall of a building but limited to risks that are associated with the building and/or arising from the building itself. Risks are limited to those affecting people in and about buildings.
- 204 The power to prescribe a new building safety risk is by regulation and subject to the affirmative procedure in both Houses of Parliament. Before making any regulations prescribing new building safety risks, the Secretary of State must consult with the Building Safety Regulator. The Secretary of State must also consult any persons that they consider appropriate.
- 205 In addition to the requirement to consult in clause 16, the Secretary of State can ask the Building Safety Regulator to advise them as to whether a particular new building safety risk should be prescribed, the Building Safety Regulator is obliged to provide such advice on request (clause 18).
- 206 The Building Safety Regulator may proactively recommend to the Secretary of State to specify a new building safety risk (clause 17). Before making a recommendation, the Building Safety Regulator must be satisfied that if the new building safety risk occurred in a higher-risk building it would have the potential to cause a major incident (serious injury or death to a significant number of people in a single event). In prescribing a new building safety risk, if the Secretary of State is giving effect to regulatory advice or recommendation; the requirement to consult the Building Safety Regulator is therefore switched off.
- 207 Clause 5 will support this function of the Building Safety Regulator and requires the Building Safety Regulator to keep the safety of people in and about buildings in relation to risks arising from buildings under review.
- 208 Once prescribed, the Secretary of State will have the power, by regulations, to revoke a new prescribed risk from the definition of building safety risks under section 14 of the Interpretation Act 1978. This provides that a power in an Act to do something, by regulations, includes a power to amend, vary or revoke using the same power. This power will only apply to prescribed risks and not to the risks expressly set out on the face of the Bill: fire and structural failure – these should remain at the heart of the Building Safety Regime.

Background

- 209 This is a new provision.
- 210 The Independent Review focused on fire and structural safety risks only and recommended these were the initial scope for building safety risks in the new regime.
- 211 The Government sought research from the Health and Safety Executive in relation to what risks would be considered to be catastrophic to verify our approach and focus. The conclusions of this research were that the major accident hazards in scope for safety management in a higher-risk building would largely be rapid onset escalating fire, structural, or explosion events.
- 212 There are also other types of hazards that may exist in buildings covered by other existing legislation such as legionella. These would not necessarily meet the criteria for inclusion as a new building safety risk. The Government therefore expects that expansion to other building safety risks in the future is likely to be minimal. The Government has no current plans for the

higher-risk building regime to extend beyond the risks of fire and structural integrity.

Example 1: Prescribing a new risk

As the Government has no current plans for the higher-risk building regime to extend beyond the risks of fire and structural integrity, the following is a hypothetical example.

For day one of the new regime, the Building Safety Regulator will regulate for risk of fire and risk to structural integrity of higher-risk buildings.

Two years later, with the experience of the operating the new regime, the Secretary of State may feel that changing weather systems has meant that high winds pose a risk to windows of higher-risk buildings which does not relate to the structural integrity of the building.

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

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

Clause 17: Recommendations about regulations under section 16; and Clause 18: Advice about regulations under section 16

Effect

213 The new regulatory regime will regulate building safety risks in higher-risk buildings – these are defined in clause 16. As what might be considered a 'building safety risk' may change over time, the Bill provides a power for the Secretary of State to prescribe new building safety risks which will be regulated under clause 16. This may only be done following consultation with the Building Safety Regulator and appropriate persons.

214 Clause 17 sets out that the Building Safety Regulator may proactively recommend to the Secretary of State that a new 'building safety risk' should be prescribed. Before making a recommendation, the Building Safety Regulator must be satisfied that if a new 'building safety risk' occurred in a higher-risk building it would have the potential to cause a major incident, i.e. serious injury or death for a significant number of people in a single event.

215 The Building Safety Regulator may also recommend the removal of a previously prescribed building safety risk on the grounds that it would not cause a major incident. The Building Safety Regulator will include details of the issues that have been considered to reach the recommendation.

216 The Building Safety Regulator does not have the power to recommend that fire or structural integrity is removed from the definition of building safety risks.

These Explanatory Notes relate to the Building Safety Bill as published in Draft on 20 July 2020 (Bill CP 264)

217 Supplementary to clause 17 and clause 16 is clause 18. In addition to the requirement to consult in clause 16, the Secretary of State can ask the Building Safety Regulator to advise them as to whether a particular new 'building safety risk' should be prescribed. The Building Safety Regulator is obliged to provide the requested advice.

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

219 If the Secretary of State does not follow the recommendations of the Building Safety Regulator in clause 17 and clause 18, then they must publish a document which sets out the Regulator's recommendation(s), the Secretary of State's decision not to follow the recommendation(s) and the reasons for that decision.

Background

220 These are new provisions.

Chapter 5: Higher-risk buildings

Clause 19: Meaning of "higher-risk building"

Effect

221 The new regulatory regime will regulate building safety risks in 'higher-risk buildings'. Clause 19 gives the Secretary of State the power, by regulations, to define 'higher-risk buildings', i.e. those buildings which will be regulated by the new regime. The power to define (and amend the definition of) higher-risk buildings is by regulations, which are subject to the affirmative resolution procedure, i.e. they must be laid in draft, debated and approved in both Houses of Parliament.

222 To ensure the regime has wide coverage, this Bill adopts a broad definition of "building". Any reference (now or in the future), to the term building can include any permanent or temporary building (in England) including any structure, erection, vehicle, vessel or movable object of any kind (see clause 35). Clause 35 also includes the power to prescribe exclusions from the definition of 'building' and the power to extend the definition of building to cover other structures.

223 The power to define higher-risk buildings is also necessarily broad and a higher-risk building can be brought within scope of the regulation by reference to a building's size, design, use, purpose or other characteristic. Although the intention, following the Independent Review, is to regulate multi-occupied residential buildings, not solely commercial buildings or other structures, this will allow the regime to be flexible in the future.

224 Before making any regulations defining 'higher-risk buildings', the Secretary of State must consult with the Building Safety Regulator, as well as any other persons the Secretary of State considers appropriate.

225 In addition to the requirement to consult in clause 19, the Secretary of State can ask the Building Safety Regulator to advise them as to whether a building should become a 'higher-risk building' or whether the definition of 'higher-risk buildings' should be changed. The Building Safety Regulator is obliged to provide such advice on request (clause 22).

226 Clause 21 allows the Building Safety Regulator to proactively recommend to the Secretary of State that a description of buildings should be added to the definition of 'higher-risk buildings', or even that an existing type of higher-risk building should be removed from the definition. In making such recommendations, the Building Safety Regulator should provide

the Secretary of State with a statement of the issues considered.

227 Before amending the definition of higher-risk building, the Building Safety Regulator need not be consulted by the Secretary of State if the Secretary of State is giving effect to advice or recommendation given by the Building Safety Regulator.

Proposed use of power

228 At the start of the new regulatory regime we propose to define a ‘higher-risk building’ as:

A building which satisfies the height condition and contains:

- a) Two or more dwellings (i.e. house, flat or serviced apartment);*
- b) Two or more rooms for residential purposes (e.g. supported accommodation), or*
- c) Student accommodation.*

Where:

1) The height condition is that:

- a) The floor surface of the building’s top storey is 18 metres or more above ground level (ignoring any storey which is a roof-top plant and machinery area or any storey consisting exclusively of plant and machinery rooms); or*
- b) the building contains more than 6 storeys (ignoring any storey which is below ground level).*

And

2) “Room for residential purposes” means a room (other than in a dwelling) which is used by one or more persons to live and sleep but excluding a room in:

- a) A residential care home;*
- b) Secure residential institution (e.g. prison, detention centre);*
- c) Temporary accommodation (e.g. a hotel, hostel, guest house, hospital, hospice).*

Background

229 This is a new provision.

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

Example 1

For day one of the new regime, the Secretary of State proposes to make regulations to define ‘higher-risk buildings’ as explained above, in summary this would cover all multi-occupied residential buildings of 18 metres or more in height, or more than six storeys (whichever is reached first).²

Two years later, with the experience of operating the new regime, the Secretary of State may feel that purpose-built blocks of flats regardless of height should be considered higher-risk buildings.

If the Secretary of State came to this view, they must consult the Building Safety Regulator and other persons the Secretary of State considers appropriate before making regulations to define (or amend the definition of) ‘higher-risk buildings’. Having considered representations made the Secretary of State will decide whether to amend the definition of ‘higher-risk buildings’.

If the Minister chooses to make the amendment, the regulations will be laid in Parliament using the affirmative procedure.

Clause 20: Modification of Part 4 in relation to certain kinds of higher-risk building

Effect

231 The new regulatory regime will regulate building safety risks in ‘higher-risk buildings’. Clause 19 provides for the definition of the ‘higher-risk buildings’ to be set out in regulations.

232 Clause 20 provides some further flexibility. It gives the Secretary of State the power to modify Part 4 of this Bill (in occupation rules) in relation to particular higher-risk buildings. This power could be used at the same time as bringing a new type of building within the definition of higher-risk building or could be used in relation to an existing type of higher-risk building. The power is needed as there might be cases where it is not appropriate to apply every provision set out in Part 4 of this Bill to all types of higher-risk buildings, and in such cases the Secretary of State may decide to modify how Part 4 applies to that type of building.

233 Additionally, when providing advice under clause 22 or making its recommendation under clause 21 regarding bringing a building into scope of the regulatory regime, the Building Safety Regulator must also consider whether it is appropriate to make modifications in relation that description of building when putting forward its advice or recommendation.

234 This power to modify parts of the regime applies with respect to the in-occupation regime only. Amendments to the Building Act 1984 already provide for a power to have different provision in building regulations for higher-risk buildings including different types of

² Height of a building will be measured in accordance with Diagram D6 of Approved Document B. This is from the ground level of the lowest side of the building to the upper surface floor of the top occupied storey (e.g. excluding any top storeys consisting exclusively of plant rooms).

Counting the number of storeys in a building, or in a separated part of a building is also set out in Approved Document B, diagram D5. Storeys will be counted only at the position which gives the greatest number and exclude any basement storeys. The height of top storey excludes roof-top plant areas and any top storeys consisting exclusively of plant rooms. The height of the top storey is measured from upper floor surface of top floor to ground level on lowest side of the building.

higher-risk buildings.

235 The power to define (and amend the definition of) higher-risk buildings by regulations (clause 19) and the power to apply only certain parts of the regime to higher-risk buildings (clause 20), are both subject to the affirmative procedure.

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

Proposed use of power

237 There are currently no proposals to use this power. See clause 19 above for our current proposal for the day one definition of 'higher-risk building'. We do not propose to make any modifications under clause 20 to the regulatory regime for the types of building falling within the day one definition. Therefore, the whole of the regulatory regime will apply to that description of higher-risk buildings.

Background

238 This is a new provision

Example 1

There are no current proposals to use the power in clause 20 so the following example is purely hypothetical. For day one of the new regime, the Secretary of State proposes to make regulations to define 'higher-risk buildings' as explained above in the note for clause 19, in summary this will cover all multi-occupied residential buildings of 18 metres or more in height, or more than six storeys (whichever is reached first)³.

Two years later, with the experience of the operating the new regime, the Secretary of State may feel that it is not appropriate for the resident engagement requirements to apply to higher-risk buildings which are student accommodation given the nature of the occupants.

If the Secretary of State comes to this view, they must consult the Building Safety Regulator and other appropriate persons before making regulations. In response, the Building Safety Regulator may make representations as to whether it is appropriate for the resident requirements to apply to student occupants.

Having considered the representations received the Secretary of State will then

³ Height of a building will be measured in accordance with Diagram D6 of Approved Document B. This is from the ground level of the lowest side of the building to the upper surface floor of the top occupied storey (e.g. excluding any top storeys consisting exclusively of plant rooms).

Counting the number of storeys in a building, or in a separated part of a building is also set out in Approved Document B, diagram D5. Storeys will be counted only at the position which gives the greatest number and exclude any basement storeys. The height of top storey excludes roof-top plant areas and any top storeys consisting exclusively of plant rooms. The height of the top storey is measured from upper floor surface of top floor to ground level on lowest side of the building.

decide whether or not to make the regulations making the modification.

Clause 21: Recommendations about regulations under section 19

Effect

239 The new regulatory regime will regulate building safety risks in higher-risk buildings. Clause 19 provides for the definition of 'higher-risk buildings' to be set out in regulations.

240 Clause 21 provides that the Building Safety Regulator must recommend to the Secretary of State that a particular description of buildings should be subject to regulation under the regime if the conditions of the clause are met. The conditions are: the Building Safety Regulator must be of the view that building safety risks in the type of building in question are higher than in buildings in general and that if the prescribed building safety risks arose in the type of building in question it could cause a major incident (serious injury or death to a significant number of people in a single event).

241 In making recommendations, the Building Safety Regulator must also make a recommendation as to which relevant enactments should apply (and not apply) to the classification or description of building which it has recommended should come into scope of the regulatory regime.

242 The relevant enactments are the provisions in the Bill that apply to buildings in scope of the regulatory regime. There might be cases where it is not appropriate to apply every provision of the regime in occupation to a certain description of buildings, and so when making its recommendation about bringing a building into scope of the regulatory regime, the Building Safety Regulator must also consider which provisions it thinks are appropriate to apply to that description of building when putting forward its recommendation.

243 The Building Safety Regulator may also recommend the removal of a description of higher-risk building from the regulatory regime although we think this power is unlikely to be used.

244 If the Secretary of State chooses not to follow the recommendations of the Building Safety Regulator, then they must publish a document which sets out the regulator's recommendations, the Secretary of State's decision not to follow the recommendation, and the reasons for that decision. This also applies for recommendations by the Building Safety Regulator to add to the definition of a higher-risk building.

245 Aside from making recommendations to the Secretary of State in regards to higher-risk buildings, the Secretary of State can ask the Building Safety Regulator to advise them as to whether a building should become a higher-risk building; should be removed from that category; or whether the category of higher-risk buildings should be changed. The Building Safety Regulator is obliged to provide such advice on request (clause 22).

Proposed use of power

246 The Building Safety Regulator would use the powers in clause 21 if, following the introduction of the day one definition of higher-risk buildings, the Building Safety Regulator independently considers it needs to make recommendations to the Secretary of State as to the addition or removal of a description of building from the definition.

Background

247 This is a new provision.

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

Example 1

There are no current proposals to amend the definition of higher-risk buildings, so the following is a hypothetical example. On day one of the new regulatory regime, the Secretary of State proposes to make regulations to define 'higher-risk buildings' as explained above in the note on clause 19, which is summary will cover all multi-occupied residential buildings of 18 metres or more in height, or more than six storeys (whichever is reached first)⁴.

Two years later, with experience of operating the regime, the Building Safety Regulator may be of the opinion that office blocks, which meet the trigger height threshold (of 18 metres or more than six storeys), should be deemed 'higher-risk' and come into scope of the regulatory regime.

In coming to this opinion, the Building Safety Regulator must consider the building safety risks in relation to this type of building and whether the risk of major incident is higher than in buildings in general. The Building Safety Regulator must recommend to the Secretary of State that this particular description of an office block should be considered higher-risk, and therefore that they think it should fall in scope of the regulatory regime.

In this example the Building Safety Regulator must also consider which of the building safety enactments it thinks should apply to office blocks. The Building Safety Regulator might consider that the Safety Case and golden thread provisions are critical to the safety of office blocks, but duties in relation to resident engagement should not apply because office blocks are not residential.

The Secretary of State would then consider this recommendation. In this example, if the Secretary of State agreed with the recommendation, then they have the power, by regulations under clause 19, to bring the particular description of office blocks into scope of the regulatory regime, and this type of buildings would be regulated by the Building Safety Regulator subject to a suitable transition period.

If however the Secretary of State disagreed with the Building Safety Regulator and chose not to prescribe the recommended description of an office block as a higher-risk building, the Secretary of State would be required to publish a document

⁴ Height of a building will be measured in accordance with Diagram D6 of Approved Document B. This is from the ground level of the lowest side of the building to the upper surface floor of the top occupied storey (e.g. excluding any top storeys consisting exclusively of plant rooms).

Counting the number of storeys in a building, or in a separated part of a building is also set out in Approved Document B, diagram D5. Storeys will be counted only at the position which gives the greatest number and exclude any basement storeys. The height of top storey excludes roof-top plant areas and any top storeys consisting exclusively of plant rooms. The height of the top storey is measured from upper floor surface of top floor to ground level on lowest side of the building.

outlining the original recommendation, and stating both their decision not to follow the recommendation and reasons why.

Clause 22: Advice about regulations under section 19

Effect

- 249 The new regulatory regime will regulate building safety risks in higher-risk buildings. The Secretary of State can ask the Building Safety Regulator to advise them as to whether a type of building should become a higher-risk building, or a type of building should be removed from that definition.
- 250 The Building Safety Regulator is obliged to provide such advice if requested. When providing advice on including a new description of higher-risk building, the Building Safety Regulator must also recommend which parts of the regulatory regime should apply.
- 251 Clause 19 provides for the Secretary of State to set out the definition of higher-risk buildings in regulations. The power in clause 19 to define higher-risk buildings is necessarily broad (in that buildings of any height, size, design, use, purpose or other characteristic can be brought within the scope of regulation). The power is also flexible because clause 20 gives the Secretary of State a power, by regulations, to apply only parts of the regulatory regime to descriptions of buildings.
- 252 Clause 5 will support this function of the Building Safety Regulator and requires the Building Safety Regulator to keep the safety of people in and about buildings in relation to risks arising from buildings under review.

Background

- 253 This is a new provision.
- 254 The Independent Review identified that it is important to ensure that the Government can respond quickly in the future, where necessary, to broaden the definition of higher-risk buildings in light of either critical new information emerging or experience of operating the new regime.
- 255 The Building Safety Regulator will provide enhanced oversight of the building safety regulatory system and will analyse data from the operating regime to be able to fulfil this duty.

Example 1

There are no current proposals to amend the definition of higher-risk buildings, so the following is a hypothetical example. On day one of the new regulatory regime, the Secretary of State proposes to make regulations to define 'higher-risk buildings' as explained above in the note on clause 19, which is summary will cover all multi-occupied residential buildings of 18 metres or more in height, or more than six storeys (whichever is reached first).⁵

⁵ Height of a building will be measured in accordance with Diagram D6 of Approved Document B. This is from the ground level of the lowest side of the building to the upper surface floor of the top occupied storey (e.g. excluding any top storeys consisting exclusively of plant rooms).

Two years later, with the experience of the operating the new regime, the Secretary of State might feel that purpose-built blocks of flats regardless of height should be considered higher-risk buildings. To understand more about the issue the Secretary of State could formally request advice from the Building Safety Regulator on inclusion of this type of building in the definition of higher-risk buildings.

The Building Safety Regulator would be required to provide the Secretary of State with advice. If the advice recommended the inclusion of this type of building in the definition the Building Safety Regulator would also be required to explain whether any modifications should be made to the regulatory regime in relation to its application to the proposed new type of building.

Before amending the definition of higher-risk buildings, the Secretary of State would be required to consult such persons as they consider appropriate.

Where the Secretary of State is proposing to make regulations to give effect to the advice of the Building Safety Regulator then the Secretary of State would not be required to re-consult the Building Safety Regulator, but would have to consult such other persons as the Secretary of State considers appropriate. Regulations to include a new type of building in the definition of higher-risk building must be laid in Parliament under the affirmative procedure, i.e. they cannot be made until they have been laid in draft, debated and approved by both Houses.

Chapter 6: Plans and reports

Clause 23: Strategic plan; and Clause 24: Revised strategic plans

Effect

256 Clause 23 creates a requirement for the Building Safety Regulator to produce a strategic plan specifying how the Building Safety Regulator proposes to carry out its building functions during the period to which the plan applies.

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

258 Once approved by the Secretary of State, the plan must be published and adhered to by the Building Safety Regulator. The first plan must be submitted by the Building Safety Regulator to the Secretary of State for approval as soon as reasonably practicable following the

Counting the number of storeys in a building, or in a separated part of a building is also set out in Approved Document B, diagram D5. Storeys will be counted only at the position which gives the greatest number and exclude any basement storeys. The height of top storey excludes roof-top plant areas and any top storeys consisting exclusively of plant rooms. The height of the top storey is measured from upper floor surface of top floor to ground level on lowest side of the building.

These Explanatory Notes relate to the Building Safety Bill as published in Draft on 20 July 2020 (Bill CP 264)

commencement of clause 23. A new plan must be submitted to the Secretary of State before the period covered by the existing plan finishes.

259 Clause 24 provides that a strategic plan may be revised at any time. The Building Safety Regulator may submit a revised plan for the Secretary of State's approval, or the Secretary of State may require that the Building Safety Regulator submit a revised plan. The revised plan must relate to the remainder of the period to which the current plan relates, or a period that the Secretary of State and the Regulator agree it should apply to. This ensures that should a major incident occur which could require a change of priorities, the Secretary of State and Building Safety Regulator are able to put in place a revised plan to reflect those priorities.

Background

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

261 Schedule 1, paragraph 2 excludes building functions from the requirement under section 11 of the Health and Safety at Work etc. Act 1974 to ensure that this new provision (clause 23) applies exclusively to the Building Safety Regulator's building functions. The rationale for creating a new requirement for a plan specifically relating to the Building Safety Regulator's building functions is to reflect the importance and distinctiveness of the Health and Safety Executive's new building functions, and to allow for the provision of consultation requirements (notably with the residents' panel) appropriate to the building functions.

Example 1

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

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

Clause 25: Annual report about information provided under mandatory reporting requirements

Effect

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

263 Clause 25 will require the Building Safety Regulator to publish aggregated information it has received from dutyholders as part of the mandatory occurrence reporting regime on an annual basis. The clause makes clear that information contained within the annual report

must not contain any personal data.

Background

264 This is a new provision.

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

Example 1: Information published as part on an annual report

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

Clause 26: Statement of regulator's engagement with residents etc

Effect

266 Clause 26 requires the Building Safety Regulator to produce a statement regularly about how it has engaged with the residents and related groups about the work of the Building Safety Regulator. This statement must cover engagement with:

- The residents' panel (clause 11);
- Residents of higher-risk buildings;
- Owners of the leasehold on flats in higher-risk buildings who are not occupying the property; and
- Organisations that represent, support or promote the interests of residents or owners.

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

Background

268 This is a new provision.

Example 1

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

Chapter 7: Enforcement

Clause 27: Authorised officers

Effect

- 269 Clause 27 allows the Building Safety Regulator to authorise individuals so that they can exercise specified powers to carry out ‘relevant building functions’ on behalf of the Building Safety Regulator. Authorisation can only be given where the person is considered by the Building Safety Regulator to be qualified to exercise the power. The Building Safety Regulator will provide the person with written proof of this authorisation, which they will be required to produce if asked.
- 270 ‘Relevant building functions’ are all of the Building Safety Regulator’s enforcement-related functions, including building control functions under the Building Act 1984 and the function of enforcing the new occupation regime set out in Part 4 of this Bill. This excludes the Building Safety Regulator’s general functions that do not have an enforcement element.
- 271 The powers available to authorised officers are found in Schedule 2 of this Bill.

Background

- 272 The power set out in this clause is designed to enable the effective functioning of the Building Safety Regulator’s functions in respect of higher-risk buildings. The Independent Review found that the regulation of higher-risk buildings could be improved by bringing together Health and Safety Executive expertise, local authority building control expertise (and where appropriate, expertise from the private sector) and fire safety expertise from Fire and Rescue Authorities. Clause 13 enables the Building Safety Regulator to secure the involvement of Local Authorities and Fire and Rescue Authorities in its work on a higher-risk building.
- 273 Under its general powers (notably new section 11A Health and Safety At Work etc Act 1974), the Building Safety Regulator could also secure expertise from the private sector (where appropriate) to work on the team delivering the Building Safety Regulator’s responsibilities in respect of a higher-risk building. In this framework, appropriately trained members of the Building Safety Regulator’s team will require powers to carry out functions on the Building Safety Regulator’s behalf. This is what the provision sets out to do.
- 274 The Building Safety Regulator will have discretion in designating different sets of powers on different individuals, as some will have more competence and expertise than others. This will allow the Building Safety Regulator to assign the relevant powers to those persons who are qualified and equipped to exercise them.

Example 1

The Building Safety Regulator sets up a “multi-disciplinary team” to regulate the construction of a higher-risk building. The Building Safety Regulator requests assistance with building control matters from the local authority, which provides an appropriately trained building control expert to assist the Building Safety Regulator. The building control expert is designated Building Safety Regulator powers to enter non-domestic premises without a warrant and to require information, documents etc (powers under paragraphs 1 and 4 of Schedule 2). However, the Building Safety Regulator decides not to designate this individual with powers to obtain a warrant to enter premises (powers under paragraphs 2 and 3 of Schedule 2), as the inspector has not been trained to draft and swear to an information for a justice of the peace.

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

Clause 28: Authorised officers: offences

Effect

275 Clause 28 sets out the criminal offences of obstructing and impersonating authorised officers of the Building Safety Regulator. These offences are designed to protect the effective functioning and decision-making of the Building Safety Regulator by ensuring individuals do not impede the Building Safety Regulator's operations.

276 Each of the offences have different penalties to reflect the respective gravity of the offence.

277 The offences of obstructing and impersonating an authorised officer will be triable only in the magistrates' court, with a maximum fine for obstruction of level 3 on the standard scale (currently £1000) (mirroring the offence of obstructing a police officer in section 89(2) of the Police Act 1996), while impersonation will carry an unlimited fine (mirroring the offence of impersonating a police officer in section 90(1) of the Police Act 1996).

Background

278 This clause mirrors similar provisions supporting staff of other regulatory bodies such as the Food Standards Agency, Financial Conduct Authority and the Health and Safety Executive. These offences aim to protect staff of the Building Safety Regulator or those working on the Building Safety Regulator's behalf, as well as residents and those subject to the regulator's jurisdiction.

279 This is because obstruction could potentially disrupt or sabotage the operations of the Building Safety Regulator, which could adversely impact the safety of individuals in the building. In addition, those seeking unauthorised entry to dwellings could impersonate staff of the Building Safety Regulator to assist them in doing so.

Example 1: Site obstruction

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

Example 2: Impersonation

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

Clause 29: Provision of false or misleading information to the regulator

Effect

280 Clause 29 sets out the criminal offence of providing false or misleading information, in the circumstances described in subsection (1)(a)-(c), to the Building Safety Regulator. As with the previous clause, this offence is designed to protect the effective functioning and decision-making of the Building Safety Regulator.

281 The clause sets out that providing false or misleading information is triable in either a magistrates' or the Crown court; the broad range of sentencing outcomes gives the courts options to address the different degrees of culpability possible with an offence where the mental element includes both intent and recklessness and the offence covers both false and misleading information. A person deliberately providing false information is quite different from a person recklessly providing misleading information, so the sentencing options available need to be equally disparate. If tried by magistrates, the offence will carry a maximum penalty of an unlimited fine and/or 12 months' imprisonment (six months until the commencement of section 154(1) of the Criminal Justice Act 2003). If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years' imprisonment.

Background

282 Clause 29, as with the clause 28, mirrors similar provisions supporting staff of other regulatory bodies with the aim of protecting the staff of the Building Safety Regulator or those working on the Building Safety Regulator's behalf. The offence exists primarily to deter the provision of false information, which could disrupt or sabotage the operations of the Building Safety Regulator, which in turn could adversely impact the safety of individuals in the building.

Example 1: False claim of a fire risk assessment

In a building registration application to the Building Safety Regulator, a building owner falsely claims that a fire risk assessment has been carried out. Upon discovering that the assessment has not been carried out, the Building Safety Regulator will have a range of options, including issuing a compliance notice under clause 91, but would also be able to take criminal proceedings against the building owner under this clause.

Chapter 8: Reviews and appeals

Clause 30: Review by regulator of certain decisions made by it

Effect

283 Clause 30 enables persons directly impacted by the Building Safety Regulator's decisions to request a review of such decisions. Secondary legislation will set out the category of decisions that will be reviewable under this provision, the persons who can apply for review, and will detail the administrative requirements (i.e. form, period for submission, fee) of such requests.

284 The Building Safety Regulator will assess the request against the circumstances to determine the extent of the review and how the review will take place.

285 Once the Building Safety Regulator comes to a judgement to either uphold or vary the decision, it must notify the person in writing within the period specified in regulations or another agreed period.

286 This clause will operate in conjunction with clause 31. If the person is not content with the

decision reached by the Building Safety Regulator's review, they may appeal this decision to the First-tier Tribunal, within a prescribed period after the conclusion of the review.

287 The option to appeal to the First-tier Tribunal will not be available in the first instance, only after internal review by the Building Safety Regulator.

Background

288 This clause is intended for certain types of regulatory decisions, such as refusal of Gateway applications. This does not include enforcement decisions, which will be appealable directly to the Courts.

289 This new legislation will give the Building Safety Regulator powers to undertake building control functions for higher-risk buildings as well as powers to oversee the performance of other building control bodies in England. The Building Safety Regulator will thus have the power to take individual regulatory decisions.

290 As such, this provision intends to allow interested persons to make a direct request to the Building Safety Regulator for a review of its decision before appealing to the First-tier Tribunal. This aligns with existing guidance that parties may achieve quicker resolution if alternative dispute resolution procedures are adopted.

291 This procedure mirrors the review regime used by the Food Standards Agency and is similarly used by the Social Housing Regulator, Health and Safety Executive and Civil Aviation Authority.

Example 1

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

Clause 31: Right of appeal: requirement for review before appeal

Effect

292 Clause 31 specifies that where a decision by the Building Safety Regulator may be reviewed under clause 30, it must first be lodged with the Building Safety Regulator's internal review procedure and concluded before being appealed to the First-tier Tribunal.

293 Where a decision has been reviewed by the Building Safety Regulator and is varied, the right of appeal will apply to the varied decision and not the original decision made by the Building Safety Regulator.

294 Where an appeal is lodged in the First-tier Tribunal, this appeal will be in respect of the decision taken by the Building Safety Regulator at the end of the review and will take into account the representations made during the review.

Background

295 This clause is designed to operate in conjunction with clause 30.

Example 1

The example provided for clause 30 is also applicable here.

Chapter 9: Supplementary and general

Clause 32 (and schedule 3): Cooperation and information sharing

Effect

296 Clause 32 introduces Schedule 3, which creates the power for reciprocal information sharing between the Building Safety Regulator and other persons in connection with certain statutory functions. Schedule 3 also creates legal duties for the Building Safety Regulator and specified bodies to cooperate in connection with certain statutory functions.

297 Schedule 3 paragraph 2 enables the reciprocal sharing of information between the Building Safety Regulator and local authorities and imposes duties to cooperate between them.

298 Paragraph 2 also enables the Secretary of State, through statutory instrument, to add to the list of local authorities' functions to which these provisions apply. This reflects that there are a particularly wide range of potential operational interactions between the Building Safety Regulator and local authorities. The Government does not believe that it can foresee all the functions where operational experience will demonstrate that cooperation and information sharing between the Building Safety Regulator and the local authority would support effective delivery of those agencies' statutory functions.

299 Schedule 3 paragraph 3 enables the reciprocal sharing of information between the Building Safety Regulator and Fire and Rescue Authorities. It also imposes duties to cooperate on the Building Safety Regulator and Fire and Rescue Authorities, focused on both authorities' regulatory functions in respect of higher-risk buildings.

300 Schedule 3, paragraph 4 requires cooperation between the Building Safety Regulator and ombudsmen. This is intended to ensure that:

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

301 Schedule 3 paragraph 4(7) enables the Secretary of State, through regulations, to amend and add to the list of relevant functions to which the duties in relation to ombudsmen apply. It also enables the Secretary of State to add and amend the persons subject to the information sharing and cooperation provisions in relation to ombudsmen to enable other organisations to be added or for those no longer providing these services to be removed.

302 Schedule 3 also enables the Building Safety Regulator and the Secretary of State to share information, and allows the Building Safety Regulator to share information with the police in support of criminal investigations or proceedings.

Background

303 Clause 32 and Schedule 3 are new provisions.

304 The duties to cooperate and powers to share information set out in clause 32 and Schedule 3 are designed to foster a culture of joint working between the Building Safety Regulator and other regulators and enforcement bodies operating in the same regulatory landscape (with functions relevant to building standards and safety), to support one another to discharge their statutory functions effectively.

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

Example 1: Local authorities and the Building Safety Regulator

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

Example 2: Fire and Rescue Authorities and the Building Safety Regulator

The Fire and Rescue Authority identifies a breach of the Regulatory Reform (Fire Safety Order) 2005, which indicates the potential for a similar breach in the new regulatory regime in relation to occupation of a higher-risk building. Relying on the duty to cooperate and the power to share information, the Fire and Rescue Authority shares information about the issue with the Building Safety Regulator, and the two organisations would work together to ensure appropriate action is taken to deal with the breach and mitigate any risk to safety, using whichever organisation's expertise and powers are best suited to resolving this issue.

Example 3: Ombudsman and the Building Safety Regulator

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

Clause 33: Fees and charges

Effect

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

Background

307 This is a new provision.

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

309 This provision should be read alongside clause 58, which enables the Secretary of State to make regulations enabling the Building Safety Regulator (and local authorities) to charge for their functions under the Building Act 1984 and regulations made under it.

Example 1

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

Subsection 5 is intended to be used where the Building Safety Regulator shares expertise with international partners and will only be used with the consent of the Secretary of State and in line with Government guidance on charging.

Clause 34: Review of regulatory regime

Effect

310 Clause 34 sets out a mandatory process for the Secretary of State to periodically appoint an independent reviewer to review the effectiveness of the building regulatory regime and make recommendations for improvement where necessary. This is to ensure the whole system is fit for purpose. In the first instance, the Secretary of State must appoint an independent reviewer within five years of the Act being passed. Subsequent appointments must be made within five years of the day on which the most recent appointment was made.

311 The first step is for the Secretary of State to appoint an independent person to undertake the review. The independent person must review the effectiveness of the Building Safety Regulator, the adequacy and effectiveness of the provisions of the Building Act 1984 and this Bill, any connected matters, and any other matters specified in the appointment itself.

312 Once the review is complete, the independent reviewer must submit a written report to the Secretary of State explaining the outcome of the review and provide any recommendations for improvement where necessary. The Secretary of State is required to publish a copy of this report.

Background

313 This is a new provision.

314 The Independent Review recommended for there to be a periodic review (at least every five years) of the effectiveness of the overall system of building regulation including accountabilities, responsibilities, guidance, and the effectiveness of the regulator.

Example 1

Approaching the five-year mark of operating the new building regulatory regime, the Secretary of State feels that a proportionate amount of time has passed to allow the system to be reasonably assessed.

Once the Secretary of State has determined that a review should take place, they must appoint an independent person to conduct this review. In considering the appropriate person to appoint as the reviewer, the Secretary of State must ensure the person is independent from the Secretary of State, the Building Safety Regulator, the building control profession and the built environment industry.

During the review, the independent person may observe that there are non-legislative matters of interest connected to the effectiveness of the Building Safety Regulator that impact the effectiveness of the system. The reviewer would be able to consider these matters as part of the review and make recommendations about them.

At the end of the review, the independent reviewer will need to submit a written report to the Secretary of State detailing the outcome of the assessment. At this stage, the reviewer may have noted various areas for improvement within the system. The reviewer must detail these recommendations for improvement in the report that they submit to the Secretary of State. The Secretary of State must publish a copy of this report.

Clause 35: Interpretation of Part 2

Effect

315 Clause 35 provides key definitions used in Part 2 of the Bill.

Part 3: Building Act 1984

Chapter 1: Building control authorities and building regulations

Clause 36: Building control authorities

Effect

316 Clause 36 amends section 91 of, and inserts new sections 91ZA, 91ZB, 91ZC and 121A into, the Building Act 1984 to set out the arrangements where the Building Safety Regulator is the

building control authority.

- 317 The amendments to section 91 make clear that for buildings or building work where the Building Safety Regulator is the building control authority, the local authority is no longer responsible for acting as the building control authority for enforcing the requirements of building regulations in respect of those buildings or that building work.
- 318 Section 91ZA (1) provides that the Building Safety Regulator is the building control authority for higher-risk buildings, or buildings which are to be higher-risk buildings, i.e. is responsible for supervising building work and enforcing compliance with building regulations' requirements for those buildings.
- 319 Section 91ZA (2) provides that the Building Safety Regulator is the building control authority in situations where a non-higher risk building becomes one as a result of building work being undertaken, or where a higher-risk building ceases to be one as a result of building work.
- 320 Section 91ZB enables the person undertaking the work to issue a notice to the relevant local authority in agreement with the Building Safety Regulator that the Building Safety Regulator is the building control authority for building work on a non-higher risk building (called a 'regulator's notice'). A regulator's notice can only be issued provided that a building control application has not already been made to a local authority or an initial notice or a public body's notice has not already been issued (subsection (3)).
- 321 Section 91ZC makes supplemental provision to Section 91ZB. In particular, subsections (2) – (4) provide that regulators' notices can only be rejected on grounds prescribed in building regulations and that a notice of rejection must be issued within a prescribed period, otherwise the regulator's notice is treated as being accepted. Subsection (5) allows for building regulations to prescribe the form and content of a regulator's notice and the way in which it is to be issued.
- 322 The clause also inserts a new section 121A into the Building Act 1984 to make clear that the Building Safety Regulator is the building control authority where sections 91ZA and 91ZB provide for this to be the case, otherwise the building control authority will be a local authority. The definition of a building control authority being either the Building Safety Regulator or a local authority is the definition for all of the new references to 'building control authority' being inserted into the Building Act 1984.
- 323 Schedule 5 makes consequential amendments to the Building Act 1984.

Background

- 324 Section 91 of the Building Act 1984 places a duty on the local authority to execute the Act and enforce building regulations' requirements in its area.
- 325 To avoid duplication of regulation, the Building Safety Regulator will be responsible for all building regulations matters when building work is undertaken on higher-risk buildings (not just fire and structural safety matters). Therefore, it will be the building control authority for all building work on higher-risk buildings, or for work which leads to a building becoming a higher-risk building, through e.g. the addition of extra storeys to an existing building, or ceasing to be a higher-risk building with the removal of storeys from the building or change of use.
- 326 Also, there will be multi building sites comprising both higher-risk buildings and non-higher-risk buildings. Although the Building Safety Regulator will automatically be the regulator for the higher-risk building, a local authority or registered building control approver would normally be the building control body for the non-higher risk building.

- 327 However, the developer may prefer to deal with one body for the whole site. Given that neither a local authority nor a registered building control approver can undertake building control for the higher-risk building, this would mean the developer would choose the Building Safety Regulator to be responsible for providing building control for the whole site.
- 328 The regulator's notice provides the mechanism for doing this.

Example 1

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

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

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

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

Clause 37: Building regulations

Effect

329 Clause 37 inserts new provisions into Schedule 1 to the Building Act 1984 to provide powers for building regulations to set:

- Procedural requirements relating to building control and the issue of notices and certificates (new paragraph 1A);
- Procedures relating to applications for building control approval, and for requirements to be imposed on approvals (new paragraph 1B);
- Approval of schemes whose members can issue certificates, and provision about

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those certificates and schemes (new paragraph 1C);

- Requirements on giving, obtaining or keeping of information or documents, in relation to any work or other matter to which building regulations are applicable (new paragraph 1D);
- Requirements for the establishing of a system relating to mandatory occurrence reporting (new paragraph 1E);
- The form and content of documents and information to be provided with building control applications (new paragraph 1F);
- Inspection and testing provisions which building control authorities can undertake (new paragraph 1G);
- Ability of building control authorities to extend prescribed timescales for deciding applications with the agreement of the applicant (new paragraph 1H); and
- Rights to appeal decisions, appeal requirements and procedures (1I).

330 The Building Safety Regulator will be the building control authority for higher-risk buildings and buildings covered by a regulator's notice (see clause 36), and local authorities will be the building control authority for other buildings.

331 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 the Gateway process, and proposals for building work on existing higher-risk buildings will go through the refurbishment process, each of which will be laid out in building regulations.

332 Procedures similar to the current building control routes will continue to be available for buildings not in scope of the more stringent regime where a local authority is the building control authority, namely deposit of full plans or issue of a building notice. Procedures for these are currently set out in Part 3 of the Building Regulations 2010 as amended. Clause 37 provides the powers to make amendments to these current requirements, including the information to be provided, consultation with fire and rescue services and sewerage undertakers, approvals of plans, including with requirements, notification of when stages of work commence, and issue of completion certificates when work has completed.

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

Background

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

335 It also recommended that dutyholders across the building lifecycle be required to report safety concerns to the Building Safety Regulator as part of a Mandatory Occurrence Reporting System.

336 Section 16 of the Building Act 1984 sets out general provision for the deposit of plans of proposed building work with local authorities. Specific regulations on procedural matters are in Part 3 of the Building Regulations 2010 (as amended). These provisions are considered to be insufficient to implement the tightened controls needed for high rise residential buildings and so new provisions will be made in regulations for Gateways and refurbishment procedures using the powers provided in clause 37.

337 Building regulations also set requirements for notices to be given to local authorities.

338 Sections 16 and 17 of the Act allow the Secretary of State to approve persons who can issue a certificate that work complies with building regulations, and as a consequence have protection from formal enforcement action by the local authority (no persons have been approved under this power).

339 Some lower risk building work can be certified as complying with relevant building regulations requirements if the person undertaking the work is a member of a competent person scheme, and a local authority can accept the certificate as evidence of compliance. Schemes are authorised by the Ministry of Housing, Communities and Local Government and are listed in Schedule 3 of the Building Regulations 2010 (as amended).

Proposed use of powers

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

341 Paragraph 1B makes provision that prescribed documents must be submitted with an application for building control approval and also provides building control authorities the ability to set requirements when granting applications for building control approval, such as requiring the submission of revised versions of documents, setting out that work cannot proceed beyond a certain stage without further approvals, and requiring applications for the approval of design changes which occur during construction. Paragraph 1B (5) sets out that in prescribed applications for building control approval, intended to only be for refurbishment applications, applicants will be able to submit plans and the prescribed documents that they consider appropriate to the proposed work. Building control authorities will have the ability to request further information and refuse applications where the applicant fails to provide this.

342 Taken together, the powers in paragraphs 1A and 1B will be used to set out in building regulations the procedures for Gateways and refurbishment routes for building control approval in higher-risk buildings.

343 New paragraph 1C makes provision for building regulations to set out procedures for the approval of schemes for persons who can provide certificates as evidence that work complies with building regulations requirements; the suspension or withdrawal of scheme approvals, and the time periods for approvals. It is envisaged that a set of conditions of approval will be published which schemes must meet to be approved. These will be used as the basis for ongoing audit of schemes which will be necessary in order to maintain approvals.

344 New paragraph 1D will enable building regulations to set out the information and documents that must be obtained and kept, and the standards to which these documents and information must be stored and maintained to develop a golden thread of information throughout the building's lifecycle. Building regulations will specify and define prescribed standards for how

documents and information should be stored and kept, and statutory guidance will be issued to support this. These prescribed standards are to ensure the information is accessible and the information can easily be used during design and construction, and in occupation to ensure building safety. This provision also gives building control authorities or other prescribed persons the power to require documents and information to be shared with them and others in certain circumstances. Building regulations under this clause will define the prescribed circumstances where information must be shared and the prescribed persons it must be shared with in these circumstances.

345 Dutyholders will also be required to report information about safety incidents taking place during building work as part of the Mandatory Occurrence Reporting System. A list of reportable occurrences will be included in secondary legislation. New paragraph 1E gives the power to prescribe in building regulations the requirements for the mandatory occurrence reporting process. Regulations will require a Client to establish and operate a framework, according to prescribed requirements, that will enable workers on-site to report potential occurrences. Principal Designers and Principal Contractors should use this information to report structural and fire safety occurrences which could cause a significant risk to life safety in buildings within scope of the wider regime; these occurrences will be on the list mentioned above.

346 Where building regulations provide that any document or information may or must be given, new paragraph 1F provides that building regulations can prescribe the form and content of such documents, the information and other documents that must accompany it, and the way that it is given. This ensures consistency and quality standards. It is linked to paragraph 1D which sets out that the information and documents created and managed by the Client to support building safety must meet prescribed standards. Subparagraph (3) allows building regulations to specify that some documents must be given in accordance with a published direction; so, for example, building regulations might prescribe that Gateway two applications must be given to the Building Safety Regulator in accordance with a direction published by the Regulator; and the Building Safety Regulator might publish a direction saying that these applications should be submitted through an online portal. New paragraph 1F(4) sets out that building regulations can provide that in prescribed applications, intended to be used for refurbishment applications only, applicants must submit prescribed documents as they consider appropriate, and that further information or documents can be required by the building control authority. It also sets out that such applications can be refused if a prescribed document is not provided to the building control authority on request.

347 When checking work, building control authorities may need to undertake tests or take samples of building materials. New paragraph 1G provides that building regulations can make provision relating to the testing and sampling of work, prohibit the covering up of work within a prescribed time period after a specified event, and allow for the cutting into, laying open or pulling down of work in order to test or sample it.

348 It is anticipated that building regulations will set statutory timescales within which building control authorities will need to determine applications for building control approval. However, there will be projects where it will not be possible to review all the documents and make a decision within the statutory timetable. Paragraph 1H allows provision to be made for the building control authority, with the agreement of the applicant, to extend the period within which the application must be determined.

349 New paragraph 1I will enable persons directly impacted by the Building Safety Regulator's decisions under building regulations to request an appeal of such decisions.

Clause 38: Dutyholders and general duties

Effect

350 Clause 38 amends Schedule 1 to the Building Act 1984, by the addition of paragraph 5A, appointed persons, and paragraph 5B, general duties. The new regulatory regime will regulate and hold to account those participating in the design and construction of new buildings, and the refurbishment of existing buildings.

351 This clause creates a power in paragraph 5A to require appointments to be made in relation to any work under building regulations, to make provisions about the nature of the appointment (including the appointer, the appointee and the term of the appointment), and determine situations where an appointment is deemed to have been made.

352 The regulations will apply to all building work, and all persons participating in that building work. The provisions of paragraphs 5A and 5B will also apply to those appointed under the Construction (Design and Management) Regulations 2015 (CDM) when CDM applies to the building work. Those appointed under CDM 2015 will be deemed appointed under the building regulations.

353 This clause also creates a power in paragraph 5B to impose duties on relevant persons throughout the design and construction phase of the project. These dutyholders include those commissioning or undertaking work as well as those appointed, controlling or managing the work.

354 The provisions in this clause will replace paragraph 4B of Schedule 1 to the Building Act 1984, inserted by the Sustainable and Secure Buildings Act 2004, which provides powers for Building Regulations to make provision with regard to Appointed Persons and paragraph 4B will be repealed as a consequence (see schedule 5 consequential amendments).

Proposed use of this power

355 The power provided by this clause, which is amending Schedule 1 to the Building Act 1984, will enable regulations to be made setting out the appointments required when building regulations apply, and the duties which will be imposed. This will include the requirements for dutyholders to cooperate and share information and to ensure compliance with building regulations.

Background

356 This is a new provision, which will amend Schedule 1 to the Building Act 1984. Schedule 1 sets out the provision that may be made in building regulations, including detailing what should be done by whom.

357 The Independent Review identified dutyholders (including the Client, and the Principal Designer and the Principal Contractor appointed under CDM 2015) who should be held accountable for building safety during the design and construction phase. CDM 2015 defines these dutyholders and imposes duties on them including appointing the right people for the work and having suitable arrangements to ensure the project is carried out in a way that secures health and safety.

358 This provision will ensure that when buildings are designed, constructed or refurbished, all dutyholders, including existing dutyholders identified in CDM 2015, will have formal responsibilities for compliance with building regulations.

Clause 39: Industry competence

Effect

359 This clause amends the Building Act 1984, creating powers to prescribe in building regulations competence requirements relating to the Principal Designer and Principal Contractor (appointed persons), and any prescribed person. Building regulations may also impose duties on the person appointing the Principal Designer, Principal Contractor and any prescribed person to ensure that those they appoint meet the competence requirements. These requirements will apply to any design or building work on all buildings.

360 The Principal Designer, Principal Contractor, designers and contractors can be an organisation or an individual. Sub-paragraph (2) provides that the competence requirements can apply to both organisations and individuals. For individuals, the competence requirements will relate to their skills, knowledge, experience and behaviours. For organisations, the competence requirements will relate to the organisational capability - the ability of an organisation to carry out its functions under the building regulations properly. This may include having appropriate management systems, processes and policies to carry out its functions, and having the capability to ensure that its staff have the appropriate skills, knowledge, experience and behaviours.

361 Where the Principal Designer or the Principal Contractor are organisations, subsection (3) enables building regulations to impose requirements on these organisations to ensure that the individuals leading or managing the work have the appropriate skills, knowledge, experience and behaviours to manage, on behalf of the organisation, their functions as the Principal Designer or the Principal Contractor.

Proposed use of this power

362 The intention for this provision is to ensure that everyone doing design work or building work is competent to do their work in a way that is compliant with building regulations. Secondary legislation will be laid once the Bill has received Royal Assent, to impose the competence requirements. For any design or building work on all buildings, we intend that building regulations set out these duties:

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

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

364 Breach of these duties will be a criminal offence, contrary to section 35 of the Building Act 1984.

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

Related provisions

366 Clause 37 provides powers (in new paragraphs 1B and 1F of Schedule 1 to the Building Act 1984) for Building Regulations to prescribe documents to be supplied with building control applications. This will include as part of the Gateway two application, a signed declaration from the Client that they are content with the skills, knowledge, experience and behaviours of the Principal Designer and Principal Contractor, and the evidence of the Client's assessment process for the skills, knowledge, experience and behaviours of the Principal Designer and Principal Contractor.

Background

367 Building regulations do not currently make any particular provision relating to competence of persons carrying out building work. Regulation 7(1)(b) provides that 'building work shall be carried out in a workmanlike manner', but this is focused on the quality of the work rather than the competence of the person doing it. Approved Document 7 provides some guidance on meeting the requirement in regulation 7(1)(b).

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

369 The new provisions will impose general duties in relation to competence of persons carrying out any work on all buildings to ensure compliance with building regulations.

Example 1

The Client intends to commission an eight-storey residential building and appoints a Principal Designer to lead on the design work. Prior to the appointment, the Client must assess that the nominated Principal Designer has the appropriate skills, knowledge, experience and behaviours and organisational capability to carry out their duties under building regulations in relation to the specific higher-risk

building. In making this assessment, the Client considers statutory guidance which provides examples of the skills, knowledge, experience and behaviours and organisational capability required to work on higher-risk building.

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

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

During construction, the Principal Contractor must make sure that anyone they appoint to carry out building work is competent for their role or is being trained and appropriately supervised by a competent supervisor.

Clause 40: Lapse of building control approval etc

Effect

370 Clause 40 inserts a new section 32 into the Building Act 1984 which provides for building control approvals to lapse automatically after three years in respect of any buildings in which work has not commenced. It also inserts a new section 53A into the Act which makes provision for initial notices and plans certificates to lapse after three years. A new paragraph 4A is inserted into Schedule 4 to the Building Act 1984 to provide for a public body's notice and public body's plans certificate to lapse after three years.

371 Consequential amendments are made to the Building Act 1984, in particular section 47(4) is amended so that it is subject to new section 53A. Consequently, the provisions of section 53 relating to the effect of an initial notice ceasing to have effect do not apply if an initial notice lapses under section 53A.

372 Provision in new subsections 32(5), 53A(7) and paragraph 4A(4) inserted by clause 40 allows building regulations to define when work commences.

Background

373 Section 32 of the Building Act 1984 currently provides a power for a local authority to issue a notice declaring that its approval of the plans for that work has no effect, if work has not commenced within three years of the plans being deposited.

374 Section 52(5) of the Building Act 1984 currently provides a power for a local authority to cancel an initial notice if work has not commenced within three years of the notice being issued, and section 50(8) provides a power for a local authority to rescind acceptance of a plans certificate if work has not started within three years of the certificate being issued. Similar provision is made for a public body's plans certificate in paragraph 2(6) of Schedule 4 to the Building Act 1984.

Example 1

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

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

Clause 41: Determination of certain applications by Secretary of State

Effect

375 Clause 41 provides that where the Building Safety Regulator fails to make a decision on a prescribed application for higher-risk buildings within prescribed timescales, and there is no agreement with the applicant to extend the timescale, applicants can apply to the Secretary of State for a decision on the original application within a prescribed time period. The Building Safety Regulator will not be able to continue determining the original application once an application has been made to the Secretary of State for a decision in these cases.

376 The Secretary of State can appoint persons to determine these applications. Provisions will be made in building regulations for the Secretary of State to appoint a person to determine the original application, including conferring functions on them and on the effect of their decisions. The Secretary of State, and any appointed person, will have the powers of the building control authority to determine the original application with the Building Act 1984 and building regulations applying to them as they apply to the Building Safety Regulator, for example they may impose requirements on approval of an application using powers under building regulations made under clause 37.

377 Subsection (6) provides powers to make provisions about these applications in building regulations. General procedural matters in regard to these applications will be set out in building regulations, for example the prescribing the categories of applications that can use this procedure, prescribing the time period within which these applications must be made, the procedures for making an application, for determining an application, and specifying the form and content of documents. Building regulations can also place requirements on applicants and impose duties on the Building Safety Regulator in relation to these cases such as requiring applicants to notify the Building Safety Regulator when they submit an application to the Secretary of State, and requiring the Building Safety Regulator to provide relevant documents to the Secretary of State.

378 Applicants will be able to appeal decisions of the Secretary of State to the First-tier Tribunal.

Background

379 Currently developers can build at risk without building control approval; This will become an offence under the new regime for higher-risk buildings. To minimise the risk of causing undue delays to construction applicants would be able to apply to the Secretary of State for a decision in cases where the prescribed timescale for the Building Safety Regulator to make a decision has passed with no extension agreed.

Clause 42: Enforcement

Effect

380 Subsections (2) and (4) of clause 42 amend sections 35A and 36 of the Building Act 1984 to extend the time limit during which enforcement action in respect of a contravention of building regulations can take place from two years (section 35A – prosecution) or twelve months (section 36 – notice requiring rectification of non-compliant work) to 10 years. The maximum penalty for the criminal offence (set out in section 35 of the 1984 Act, which is repealed and replaced by paragraph 25 of Schedule 5 to this Bill) remains an unlimited fine and a further fine each day the default continues; the amended version of section 35 increases the maximum daily fine from £50 to level 1 on the standard scale (currently £200), reflecting inflation since 1984.

381 Subsection (3) of this clause enables the building control authority (i.e. Building Safety Regulator or local authority) to issue compliance or stop notices where there is or is likely to be a contravention of building regulations by inserting new sections 35B to 35D into the 1984 Act.

382 A compliance notice (new section 35B) can be served on a person who is contravening, or is likely to contravene, building regulations. This notice will require the person to remedy the contravention or to take the steps detailed in the notice within the specified period. This will be most useful in respect of non-safety related obligations outlined in building regulations, such as the provision of broadband.

383 Where work is being carried out that contravenes one or more particular provisions of building regulations that are specified in regulations for this purpose, where a compliance notice has not been complied with or where work would present a risk of serious harm to people in or about the building if the building were used without the contravention being remedied, a stop notice (new section 35C) can be issued, to require a person to stop all work specified in the notice (which could be all work on that project). Once issued, it will take force immediately or from a date specified in the notice. The power to specify particular provisions of the building regulations is intended to enable the Building Safety Regulator to stop work immediately on sites where Gateway requirements have been breached. The Gateway requirements will be set out in building regulations made under new paragraphs 1A and 1B of Schedule 1 to the Building Act 1984, which are inserted by Clause 37 of this Bill.

384 In line with the existing enforcement protection in section 36(5) of the Building Act 1984, new section 35D(4) sets out that compliance and stop notices cannot be issued where an application for building control approval in respect of non-higher risk building work has been granted by a building control authority and the contravention consists solely of carrying out the approved work etc. This protection does not apply to stop notices issued under new section 35C(1)(c), i.e. where the use of the building in question without the contravention having been remedied would be likely to present a risk of serious harm to people in or about the building (see new section 35D(4)).

385 These notices will be appealable to the First-tier Tribunal (subsection (5), inserting new section 39A into the Building Act 1984). Appeal of a compliance notice will suspend the effect of the

notice itself. However, given the increased seriousness of the issues justifying the issue of a stop notice, an appeal against such a notice will not suspend its effect (although an application may be made to the First-tier Tribunal for the effect of a stop notice to be suspended).

386 If the person issued with a compliance or stop notice breaches the notice, the building control authority will be able to prosecute for the breach. The offence of breaching a notice will be triable either way, reflecting not only the contravention of building regulations, but also that a formal opportunity to rectify it has been refused. If tried by magistrates, the offence will carry a maximum penalty of an unlimited fine and/or 12 months' imprisonment (six months until the commencement of section 154(1) of the Criminal Justice Act 2003). If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years' imprisonment.

Background

387 This clause introduces new powers for building control authorities to enhance their ability to address noncompliance with building regulations without resorting to criminal prosecution.

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

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

Example 1

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

Example 2

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

Example 3

A person carrying out refurbishment work has been issued with a compliance notice due to their fitting non-compliant cladding on the external walls of a building. The person has failed to comply with the compliance notice. The building control authority decides that the appropriate next step is to issue the person with a stop notice, ordering them to stop all work on site until the cladding is replaced. Non-compliance with a stop notice will be a criminal offence.

Clause 43: Liability of officers of body corporate

Effect

These Explanatory Notes relate to the Building Safety Bill as published in Draft on 20 July 2020 (Bill CP 264)

390 Clause 43 inserts new section 112A into the Building Act 1984 which provides that, where a corporate body commits a criminal offence under that Act, any director, manager, secretary or other similar officer of that body is also deemed to have committed that offence in certain circumstances. Those circumstances are where the individual has consented to or connived in the commission of the offence or where the offence is attributable to any neglect on their part. Clause 114 makes similar provision in respect of the criminal offences in Parts 2 or 4 of this Bill.

Background

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

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

393 Where there is sufficient evidence and the public interest test is met, prosecutions could be brought against directors/managers as well as prosecuting the company for an offence under the relevant statutory provisions, even where there is a sole director. This would not be regarded as prosecuting the same person twice, as the two are separate legal entities. Should both matters result in a conviction, it will be for the sentencing court to sentence the individual(s) and the corporate body appropriately.

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

Example 1

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

Chapter 2: Building control approvers and building inspectors

Clause 44: Regulation of building control profession

Effect

395 Clause 44 amends the Building Act 1984 by inserting a new Part 2A which provides for the registration of building inspectors and building control approvers. The overall purpose of Part

2A is to improve competence levels and accountability in the building control sector by creating a unified professional and regulatory structure for building control, changing and modernising the existing legislative framework. The Building Safety Regulator will also assist and encourage building inspectors under its duty in clause 6(2).

396 In future the Building Safety Regulator and each local authority (to be collectively known as building control authorities, as defined in clause 36) and each registered building control approver will be required, before exercising specified building control functions in relation to a building project (such as approving plans or submitting an initial notice), to obtain and consider advice from a registered building inspector.⁶

397 Individuals in both the private and public sector who wish to be registered building inspectors must in the future meet the same minimum standard criteria to be placed on the register. Registered building inspectors will be able to provide advice to the building control authorities or registered building control approvers, in line with the type of registration they hold. Current “Approved Inspectors” (i.e. organisations) wishing to undertake building control work will also have to meet minimum criteria to become registered as building control approvers, becoming subject to the oversight of the Building Safety Regulator. We are not requiring local authorities to register as they are the default building control authority in an area and are already subject to intervention powers (including their building control functions being transferred to another local authority) where they are failing (see section 116 of the Building Act 1984, as amended by clause 47).

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

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

399 New sections 58A to 58C set out the requirements for the registration of individuals as registered building inspectors by the Building Safety Regulator. The new sections provide for the Building Safety Regulator to publish the criteria for registration, an application procedure and enables the Building Safety Regulator to grant registration with restrictions (e.g. as to the type of buildings on which an inspector can give advice) or subject to conditions (e.g. requiring regular training) and for the Secretary of State to set, in regulations, the length registrations are valid (e.g. five years).

400 New sections 58D to 58L set out more detail on the ongoing regulation of registered building inspectors including an inspector applying to vary or cancel their registration (for example to be able to provide advice on further types of buildings after improving their competence through training), that the Building Safety Regulator will publish a code of conduct for

⁶ This requirement may not include all types of non-statutory inspections, for example of Crown buildings.

inspectors, how to deal with professional misconduct by inspectors (including a power to seek information from inspectors), disciplinary action that can be taken (including varying, suspending or cancelling an inspector's registration) and appeals. The new sections set out a new offence of acting outside the scope of their registration without reasonable excuse i.e. providing advice on a type of building which is outside the restrictions specified on their registration or providing advice whilst suspended. It also sets out two new offences of (1) providing advice outside of the scope of one's registration without a reasonable excuse (for instance where the inspector has not been informed by the Building Safety Regulator that it has been suspended) and (2) impersonating a registered building inspector with intent to deceive.

401 Sections 58M to 58O set out the requirements for the registration of persons (i.e. organisations or individuals) as building control approvers by the Building Safety Regulator. The new sections provide for the Building Safety Regulator to determine the criteria for registration, an application procedure for the registration of building control approvers and enables the regulator to grant registration with restrictions (e.g. as to the type of buildings the registered building control body can work) or subject to conditions, and for the Secretary of State to set, in regulations, the length of registrations.

402 Sections 58P to 58W set out more detail on the ongoing regulation of registered building control approvers including applying for a variation or cancellation of registration, that the Building Safety Regulator will publish professional conduct rules, a power for the Building Safety Regulator to seek information from registered building control approvers, and investigations and sanctions if a registered building control approver contravenes the professional conduct rules. It also sets out two new offences of (1) exercising a building control function outside the scope of its registration (i.e. outside the restrictions specified on its registration or taking on new work when suspended), without reasonable excuse (for instance where the approver has not been informed by the Building Safety Regulator that it has been suspended) and (2) of impersonating a registered building control approver with intent to deceive.

403 Section 58X enables the Building Safety Regulator to designate some or all of the Regulator's building control duties under sections 58A to 58W to be undertaken by another body.

404 New section 58Y enables the regulator to make operational standards rules for local authorities and registered building control approvers. Local authorities and registered building control approvers must comply with the rules in the exercise of their building control functions. The Building Safety Regulator must publish the rules and may revise and republish these rules from time to time.

405 Section 58Z enables the Building Safety Regulator to direct local authorities and registered building control approvers to provide at specified times or intervals, such specified reports, returns and other information relating to the exercise of their building control functions. A registered building control approver who fails to comply with the direction or provides false or misleading information commits an offence. This offence is punishable by a fine.

406 Section 58Z1 enables the Building Safety Regulator to request a local authority or registered building control approver to provide any documents or information relating to the exercise of their building control functions. A notice must be provided to the local authority or registered building control approver in writing to specify the nature and type of information required. A registered building control approver who fails to comply with the notice or provides false or misleading information commits an offence that is punishable by a fine.

407 Section 58Z2 enables the regulator to investigate a local authority or registered building control approver if they may have failed to meet the operational standards rules. The Building

Safety Regulator must first publish a statement of the investigation procedure it intends to follow and allow for the authority or building control approver to make representations. The Building Safety Regulator may revise and publish the revised statement at any time.

- 408 Section 58Z3 allows the Building Safety Regulator to issue an improvement notice to a local authority or registered building control approver if following an investigation or otherwise, they have breached the operational standards rules. The purpose of an improvement order is to direct the authority or registered building control approver in default to remedy the breach as specified in the order. The improvement notice must be served with a statement of reasons to explain why it has been served. Copies must be provided to the Secretary of State. In the case of a registered building control approver, copies must additionally be provided to each local authority. The notice has effect for the timeframe specified in the notice or until it is revoked. A local authority or registered building control approver may appeal the improvement notice to the First-tier Tribunal.
- 409 Section 58Z4 allows the Building Safety Regulator to issue a serious contravention notice to a local authority or a registered building control approver if following an investigation or otherwise, it is found that the operational standards rules have been breached and this poses a risk to the safety of people in or about buildings. The purpose of the notice is to direct an authority or registered building control approver to take specific action as set out in the notice to remedy the breach. The serious contravention notice must be served with a statement of reasons to explain why it has been served. Copies must be provided to the Secretary of State. In the case of a registered building control approver, copies must additionally be provided to each local authority. The notice has effect for the timeframe specified in the notice or until it is revoked. An authority or registered building control approver may appeal the serious contravention notice to the First-tier t. A person who contravenes the notice commits an offence and is liable to pay a fine.
- 410 Section 58Z5 - If the Building Safety Regulator has given a local authority one or more serious contravention notices and considers the way in which the authority exercises their building control functions falls short of the expected standards, puts the safety of persons in or about buildings at risk and is likely to continue to do so, the Regulator may recommend to the Secretary of State to make an order for the authorities functions to be transferred to the Secretary of State or another local authority. The Building Safety Regulator must initially notify the authority that it is considering taking such action and explain its reasons for this. The authority must be invited to make any representations in respect of the proposed action within specified timeframes which must be no less than 14 days. Where the Building Safety Regulator proceeds to act, it must notify the authority that it has done so and provide a statement explaining why the decision has been taken. A local authority may appeal to the First-tier Tribunal against such recommendation.
- 411 If the Building Safety Regulator has given a registered building control approver one or more serious contravention notices and considers the way in which the registered building control approver exercises their building control functions falls short of the standards expected, puts the safety of persons in or about buildings at risk and is likely to continue to do so, the Building Safety Regulator may cancel the building control approver's registration. The Building Safety Regulator must first notify the registered building control approver that it is considering taking this action and provide its reasons for this. The building control approver must be invited to make any representations in respect of the proposed action within specified timeframes which must be no less than 14 days. Where the Building Safety Regulator proceeds to cancel the approver's registration, it must notify the approver and each local authority that it has done so and provide a statement explaining why the decision has been taken. A registered building control approver may appeal to the First-tier Tribunal against the

cancellation of its registration.

Background

412 This is a new provision.

Example 1: Individual building inspector registration

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

Example 2: Building control approver registration

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

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

Section 58Z - The Building Safety Regulator requires information from a registered building control approver in relation to the exercise of its building control function. The Building Safety Regulator writes to the building control approver to direct it to provide specific reports, returns and other information and specifies the date when the information is to be provided. In providing its return to the Building Safety Regulator, the building control approver provides false and misleading reports and therefore commits an offence. The registered building control approver is convicted of the offence and ordered to pay a fine.

Section 58Z1 - The Building Safety Regulator requires information from a registered building control approver in relation to its building control functions. The Building Safety Regulator provides a notice in writing to the registered building control

approver which specifies the information required, the date by which it is required and the form the information must be provided in. The registered building control approver fails to comply with the notice. The registered building control approver commits an offence by failing to provide the information requested. The registered building control approver is convicted of the offence and ordered to pay a fine.

Section 58Z2 - The Building Safety Regulator receives a complaint that a local authority has failed to meet the operational standards rules in the exercise of their building control functions. The Building Safety Regulator decides to investigate the local authority. The Building Safety Regulator will have published a statement outlining the procedures it will follow in relation to investigations and provides an opportunity for the local authority to make representations during the investigation.

Section 58Z3 - Following an investigation, it is established that the operational standards rules have been breached by local authority. To remedy the situation, the Building Safety Regulator serves an improvement notice on the local authority together with a statement of reasons explaining why the notice has been served. The Building Safety Regulator also provides copies to the Secretary of State. The Building Safety Regulator sets out in the notice what specific actions the authority must take to resolve the breach and sets a timeframe of 28 days to complete these actions. The local authority reads the statement of reasons and understands why the decision has been taken to serve the notice. The local authority chooses to comply with the notice and does not appeal to the First-tier Tribunal. The local authority undertakes all actions set out in the improvement notice within 28 days to remedy the breach.

Section 58Z4 - Following an investigation, it is established that the operational standards rules have been breached by a local authority and this represents a risk to the safety of people in or about the buildings in concern. To remedy the situation, the Building Safety Regulator serves a serious contravention notice on the local authority together with a statement of reasons to explain why the notice has been served. The Building Safety Regulator also provides copies to the Secretary of State. The Building Safety Regulator sets out in the notice what specific actions the authority must take to resolve the breach and sets a timeframe of 28 days to complete these actions. The local authority reads the statement of reasons and understands why the decision has been made to serve the notice. The local authority does not appeal the notice to the First-tier Tribunal. The local authority, however, fails to comply with the notice and does not undertake the actions as set out within the 28-day timeframe. The local authority does not have reasonable justification for failing to carry out the actions as directed in the notice and is therefore convicted of this offence and is ordered to pay a fine.

Section 58Z5 - The Building Safety Regulator has given a local authority a serious contravention notice, and the local authority appears to be continuing to exercise their building control functions below the expected standard, putting the safety of persons at risk. The Building Safety Regulator considers that the appropriate next step is to recommend to the Secretary of State to make an order to transfer the authority's functions to another local authority. The Building Safety Regulator notifies the local authority that it is considering taking such action and explain its

reasons. The local authority is invited to make any representations within 14 days in respect of this proposed action. After representations have been made, the Building Safety Regulator considers it appropriate to proceed to act and it notifies the authority that it has done so and provides a statement explaining why the decision has been taken. The local authority chooses not to appeal this decision to the First-tier Tribunal.

Clause 45: Transfer of approved inspectors' functions to registered building control approvers

Effect

413 Part 2 of the Building Act 1984 currently provides for Approved Inspectors (including organisations and individuals) to supervise building work. This clause makes a number of consequential amendments to provisions in the Building Act 1984, mainly in Part 2, so that references to Approved Inspectors are changed to become references to registered building control approvers. Both private sector companies and sole traders that were previously operating as Approved Inspectors will be able to register with the Building Safety Regulator to become registered building control approvers.

414 Local authorities will not have to register as building control approvers and will continue to perform their building control functions. This is because local authorities have a statutory duty to enforce building regulations in their area under section 91(2) of the Building Act 1984. It should be noted that under section 116 of the Building Act 1984 (as amended by clause 47) where a local authority is failing, its building control functions can be transferred by the Secretary of State to another local authority.

Background

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

Example 1

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

Clause 46: Functions exercisable only with advice of registered building control approvers

Effect

416 Clause 46 provides that some building control functions will be specified as functions which building control authorities (defined as the Building Safety Regulator and local authorities in clause 36) or registered building control approvers will only be able to carry out having first obtained and considered the advice of a registered building inspector. This is to ensure that individuals who have demonstrated relevant competence are advising decision-makers before important building control decisions are taken. These restricted functions will be set out in secondary legislation.

417 Building control authorities have a statutory duty to supervise and enforce building

regulations in their area under section 91(2) of the Building Act 1984 in the case of local authorities, and the new building control regime for higher-risk buildings (and other buildings where a regulator's notice is in force (see clause 37)) in the case of the Building Safety Regulator. It is not intended that all of the work they do under this duty will be specified as a function which they must not exercise before they have obtained and considered a registered building inspector's advice. We have in mind that a building control authority's functions are equivalent to those of a registered building control approver for building work, and not its functions of checking the initial notices etc. of registered building control approvers, will be specified.

- 418 Some examples of local authority functions that could be specified in secondary legislation as functions which an authority can only exercise after obtaining and considering advice from a registered building inspector may include approval or rejection of full building plans and issuing completion certificates. Examples of local authority functions that are unlikely to be included in the list of functions are accepting and rejecting initial notices from registered building control approvers, accepting or rejecting plans certificates from such bodies and accepting or rejecting amendment notices from such bodies. Some examples of Building Safety Regulator functions that might be specified include approving a construction Gateway application for a higher-risk building or issuing a completion certificate.
- 419 This clause requires that building control authorities and registered building control approvers must obtain and consider the advice of a registered building inspector each time they want to make a decision on a restricted function. If a registered building control approver breaches this requirement it can be fined. For building control authorities, in the case of failure to seek advice from a registered building inspector, their decision could be subject to judicial review for failing to follow the legislative process.

Background

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

Example 1: Local authority

A local authority wishes to issue a final completion certificate on a building. The local authority will be required to obtain advice from a registered building inspector (who may or may not be directly employed by them) who provides advice. The local authority will then consider the advice received and make a decision on whether or not to issue the completion certificate.

Example 2: Building Safety Regulator

The Building Safety Regulator is reviewing full plans under the new construction Gateway two arrangements for higher-risk buildings. Before deciding whether to allow construction to start, it will be required to obtain advice from a registered building inspector on the proposed plans. The Building Safety Regulator will then consider the registered building inspector's advice before making a decision on whether or not the plans provided at construction Gateway two are sufficient to allow construction to begin.

Example 3: Registered building control approver

A registered building control approver wishes to issue a plans certificate for a building. It will be required to obtain advice from a registered building inspector on the proposed plans. The body will then consider the registered building inspector's

advice before making a decision on whether or not to issue the plans certificate.

Clause 47: Default powers of Secretary of State

Effect

- 421 Clause 47 amends section 116 of the Building Act 1984. If the Secretary of State is satisfied that a local authority has failed to perform their functions, he may make an order which declares them to be in default and instruct them to discharge their functions in a specific way and within a specific timeframe. If a local authority fails to comply with this order, the Secretary of State may make a transfer order to assign to himself or to another local authority, specified building control functions belonging to the authority in default. The Secretary of State must first consult the Building Safety Regulator before making any orders.
- 422 The Secretary of State may also make a transfer order if the Building Safety Regulator makes a recommendation and if he is satisfied that the authority is exercising its functions below the standard expected, which puts, or may put, the safety of persons in or about buildings at risk, and is likely to continue to do so.
- 423 This clause amends section 117 of the Building Act 1984. Where the Secretary of State has transferred functions to himself, any expenses incurred in carrying out those functions should initially be paid from money provided by Parliament. The amount of these expenses is recoverable as a debt due to the Crown and is to be paid to the Secretary of State by the authority in default.
- 424 This clause also amends section 118 of the Building Act 1984. The Secretary of State may at any time vary or revoke a transfer order but must first consult with the Building Safety Regulator. The Secretary of State may make any provisions to deal with the transfer, vesting and discharge of any property or liabilities incurred by the person to whom the functions were transferred to, either through the revoking order or a new order.

Background

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

Example 1

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

Example 2

The Building Safety Regulator notices that a local authority is failing to perform its functions to the required standard and recommends to the Secretary of State that a

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

Example 3:

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

Clause 48: Higher-risk building work: registered building control approvers

Effect

426 This clause amends Part 2 of the Building Act 1984 in relation to higher-risk building work.

427 The amendments to sections 47 and 51A of the Building Act 1984 remove the ability for persons carrying out any building work for or on higher-risk buildings to choose their own building control body. Technically this is achieved by prohibiting the submission of an initial notice or an amendment notice in relation to such building work.

428 It is important to note that any initial notice (or other notice or certificate under Part 2) which specifies building work for or on a higher-risk building will be invalid and Part 2 (including the immunity from enforcement action) would not apply if that building work is carried out.

429 For building work for or to such buildings, only the Building Safety Regulator can carry out supervision of building control work (see section 91ZA of the Building Act 1984, inserted by clause 36). A person wishing to carry out building work in relation to such buildings is unable to use a registered building control approver (currently known as Approved Inspectors) or a local authority to supervise that work.

430 New section 52A is inserted into the Building Act 1984 to deal with the situation where there are changes to original plans which, if built, would result in works becoming a higher-risk building. In this scenario the registered building control approver (or the person carrying out or intending to carry out the work) must cancel the original initial notice. It is a criminal offence if without reasonable excuse the body or the person fails to cancel the notice. The local authority is also required to cancel the initial notice if it becomes aware that the work is high risk building work.

431 New section 52B is inserted into the Building Act 1984 by virtue of section 47(4)(b)(ia) (higher-risk building work). This clarifies that where an initial notice is cancelled under section 52A and work has become high risk building work, the building safety regulator will enforce building regulations in respect of the work, regardless of whether it is in relation to a period before or after the work became higher-risk building work.

Background

432 This clause amends sections 47, 51A and 53 of the Building Act 1984 and inserts new provisions, section 52A and 52B into that Act. The current provisions in the Building Act 1984

allow for supervision of plans and building work to be undertaken either by local authority building control or by an Approved Inspector (or by a public body itself – see clause 49).

- 433 Clause 48 amends the Building Act 1984 to prevent a dutyholder of higher-risk buildings from choosing their building control body, as recommended by the Independent Review. The amendments ensure the new Building Safety Regulator is the building control body for these types of buildings and is able to apply the new regulatory arrangements to improve the safety of such buildings. The definition of 'higher-risk building' is dealt with in clause 19.

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

Example 1: Registered Building Control Approver

A registered building control approver may have submitted an initial notice for a building which was not higher-risk building work, but which subsequently becomes high risk building work. They will be required to submit a cancellation notice to the local authority. The supervision of building work in relation to higher-risk buildings is to then be the role of the Building Safety Regulator (see section 91ZA of the Building Act 1984 as inserted by clause 36) and the construction Gateways etc processes must be used.

Example 2: Person(s) carrying out the work

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

Example 3: Local authority

A local authority may receive an amendment notice which amends the original initial notice so that the works become higher-risk building work. An amendment notice, which purports to specify higher-risk building work would be invalid and the local authority should explain this to the registered building control approver / person intending to carry out the works. The local authority has no power to accept or reject the amendment notice as it is void. If the local authority becomes aware that the higher-risk building work has started, then it must cancel the original initial notice under the power in section 52A notifying the registered building control approver and person(s) carrying out the work. The supervision of building work in relation to higher-risk buildings is the role of the Building Safety Regulator (see section 91ZA of the Building Act 1984 as inserted by clause 36) and the construction gateways etc processes must be used.

Clause 49: Higher-risk building work: public bodies

Effect

434 Clause 49 amends the Building Act 1984 by inserting a new section 54A into the Act. Section 54A gives the Secretary of State the power to make regulations amending sections 5, 54 and Schedule 4 to the Act in relation to higher-risk buildings. This would enable the Secretary of State to prevent a public body from submitting a public body notice (a notice given to the local authority to supervise their own building work instead of the local authority) for higher-risk building work, or to create a modified regime for public bodies.

Background

435 A public body is defined as a body (corporate or unincorporated) that acts under an enactment for public purposes and not for its own profit and is, or is of a description that is, approved by the Secretary of State in accordance with building regulations.

436 Historically, provision for public body notices under section 54 of the Building Act 1984 allowed public bodies to carry out supervision of their own building work. This means it is allowed to supervise its own building work only where a public notice has been accepted.

437 Moreover, section 5 of the Building Act 1984 enabled public bodies to benefit from an exemption from procedural requirements of the building regulations. This meant that an 'exempt body' does not have to notify a local authority when starting any works.

438 Were such a public body to supervise their own higher-risk building work and/or have the ability not to notify the Building Safety Regulator there would be a potential conflict of interest.

Proposed use of power

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

Example 1

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

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

Clause 50: Information gathering

Effect

440 Clause 50 amends section 53 of the Building Act 1984 in order to enable a local authority to seek information from a registered building control approver where it has ceased to supervise a project. This could include requiring all its records of supervision of building work to be made available. The provision requires that any information provided to the local authority

must also be copied to the person carrying out the work.

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

Background

442 The clause is a new power in response to issues arising from a number of Approved Inspectors that went into administration in 2019. It was found that some administrators refused to provide information to local authorities and the clients of the Approved Inspector because they considered they were under no duty to do so in the Building Act 1984. This clause places registered building control approvers (formerly Approved Inspectors) under a new duty to provide all information requested by a local authority and also to the person intending to carry out the work.

Proposed use of power

443 This provision allows the Secretary of State to make regulations in regard to the prescribed period in which the registered building control approver must furnish information to the local authority and prescribing the period and information to be sent to the person carrying out the work.

Example 1: Local authority

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

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

Example 2: Person carrying out the work

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

As directly interested in the building control information relating to works the person intending to carry them out is entitled to receive certain information from the former registered building control approver. The Secretary of State has the power to prescribe the information to be provided under building regulations.

Clause 51: Insurance

Effect

444 Clause 51 amends section 47 of the Building Act 1984. The amendment allows the Secretary of State to designate bodies to approve insurance schemes and also to publish guidance as to the adequacy of insurance schemes.

Background

445 Section 47(6) of the Building Act 1984 currently allows for the Secretary of State to approve a scheme that appears to secure the provision of adequate insurance for the work undertaken

by registered building control approvers. The Secretary of State publishes criteria for schemes of insurance. We are amending this section to allow the Secretary of State to designate bodies to undertake this function. The insurance market for registered building control approvers is intricate and some bodies have specialist insurance expertise in this area. This power will enable the Secretary of State to appoint specialist bodies to undertake this work.

Example 1

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

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

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

Clause 52: Information

Effect

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

447 The clause repeals the requirement under section 56 of the Building Act 1984 for local authorities to hold local registers of information received from registered building control approvers (although information registered will need to be saved in their historic form for a long transitional period) or uploaded to the new electronic register/portal.

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

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

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

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

Background

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

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

454 Existing registers established under section 56 of the Building Act 1984 must be still maintained and accessible to the public for a period set out in regulations; or historic information may be uploaded to the electronic register/portal.

Proposed use of this power

455 Once this clause and subsequent repeal and amendments is commenced, further regulations will be laid to provide clarity on the prescribed portal, information and persons.

Example 1: Submitting an initial notice

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

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

Clause 53: New initial notices

Effect

456 This clause amends sections 47, 53 and 55 of the Building Act 1984 and inserts new sections 53B to 53E.

457 The amendments to section 53(7) of the Building Act 1984 clarify the effect of an initial notice ceasing to be in force by virtue of either disciplinary action taken by Building Safety Regulator, cancellation of initial notice, or where the initial notice lapses.

458 Section 53 sets out the process where there is a change of registered building control approver as a result of disciplinary action taken by the Building Safety Regulator, where the person carrying out the work wishes to appoint a new registered building control approver and not the local authority.

459 The provisions require the registered building control approver, once the initial notice has been accepted, to submit a transfer certificate which must confirm that unfinished work up to the date of the certificate do not contravene any provision of building regulations.

460 The registered building control approver must also submit a transfer certificate along with the transfer report with any plans, documents or other information related to the confirmation of the transfer certificate.

461 This must be submitted to the local authority within the relevant period set out in this section (21 days or such other period prescribed in regulations) or any agreed extension to that period as agreed with the local authority.

- 462 Under section 53C the local authority must, by notice, accept or reject the certificate and report before the end of the relevant period. This provision also allows the local authority, by notice, to request further information and require the registered building control approver to give to the local authority such information as may be specified in the notice within the relevant period. Where the local authority requests further information, a copy of the notice must also be given to the person carrying out the work.
- 463 The registered building control approver must give the information specified in the notice to the local authority before the end of the period of seven days beginning with the day on which the notice is given, or such other period as may be prescribed in regulations. The registered building control approver can request for this period to be extended with the agreement of the local authority.
- 464 Section 53D sets out the effect of a cancellation of an initial notice where a new initial notice has been submitted. Section 53D requires the local authority to cancel the initial notice where the registered building control approver does not give the local authority a transfer certificate and transfer report in accordance with section 53B(2) or the local authority rejects the transfer certificate and transfer report in accordance with section 53C.
- 465 Section 53D also gives powers to the person carrying out the work to cancel the initial notice before the local authority accepts or rejects the transfer certificate and report in accordance with section 53B, i.e. voluntarily withdraw from the transfer process. Where a transfer certificate is rejected, or the developer withdraws from the transfer process then the transfer process ends and any work becomes subject to local authority enforcement and supervision.
- 466 Section 53E restricts the functions of registered building control approver where an initial notice has been accepted following a change of registered building control approver and a cancellation of initial notice as a result of disciplinary action.
- 467 During the transfers period the 'transfer process' removes the ability for the registered building control approver to issue plans, a final certificate or an amendment notice.
- 468 The amendments made to section 47 cross refer to the new provisions and amendments to section 55 ensuring that there is a right of appeal against rejection by a local authority of a transfer certificate or report.

Background

- 469 Currently if a registered building control approver is unable to undertake their function, their work reverts to the local authority system unless another initial notice has been accepted. A few Approved Inspectors were unable to secure insurance and went into liquidation in 2019, and the consequential unplanned transfers to the local authorities caused disruptions to clients and some local authorities.
- 470 Similar circumstances such as this could also arise in the future. These measures create greater flexibility and capacity for the building control system to address such issues, while satisfying the local authorities that any work by a new registered building control approver is adequate.

Example 1: Person(s) carrying out the work

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

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

building control approver.

Example 2: Registered building control approver

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

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

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

Example 3: Local authority

The local authority receives an initial notice from the person(s) carrying out the work and the registered building control approver. The local authority can either accept or reject the notice under prescribed grounds in building regulations.

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

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

Clause 54: Cancellation of initial notice

Effect

471 This clause amends section 52 of the Building Act 1984 to make new provision in relation to cancellation of initial notices by registered building control approvers, local authorities and the person intending to carry out the work.

472 Section 52(1) is amended to require a registered building control approver to cancel its relevant initial notices where it is facing disciplinary action from the Building Safety Regulator in relation to the work – this links to the new sanctions in relation to registration.

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

Background

474 At present, if a registered building control approver ceases to operate and has not cancelled its initial notices, only the person(s) carrying out the work is able to do so. This has been a

significant problem in transitioning such work to local authority building control. This clause amends section 52 of the Building Act 1984 to introduce new powers and obligations on a registered building control approver, local authority and person carrying out the work to cancel initial notices and ensure that this process can happen efficiently in the future.

Example 1: Registered building control approver

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

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

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

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

Example 2: Local authority

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

The local authority is required to cancel the initial notice when it was informed by the Building Safety Regulator.

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

Chapter 3: Miscellaneous and general

Clause 55: Functions under Part 3 of Building Act 1984

Effect

475 Clause 55 provides powers for the Secretary of State, by regulations, to allocate responsibilities in respect of functions provided to local authorities in Part 3 of the Building Act 1984 between the Building Safety Regulator and local authorities.

476 Subsection 2 allows for notification requirements to be imposed on the regulator and/or local authorities. We expect that we will use this power to require that, where the local authority retains the function in respect of higher-risk buildings, it must notify the regulator before

taking action, and vice versa.

477 Subsection (3) allows for consequential amendments to be made to the Building Act 1984.

478 Regulations will be subject to the affirmative procedure.

Background

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

Example 1

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

To avoid any confusion and potential duplication of regulation, therefore, the Secretary of State will be able to allocate functions under Part 3 for higher-risk buildings formally to the Building Safety Regulator. Alternatively, those functions may continue to rest with the local authority or be exercised jointly. This approach may be needed for matters where there are links with local authority responsibilities under the Housing Act 2004 or environmental health legislation. It will be important that where the local authority retains responsibility for certain matters, it informs the Building Safety Regulator if it intends to exercise the relevant function(s) so that there is effective coordination between the two.

Clause 56: Minor and consequential amendments

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

Clause 57: Appeals

Effect

481 Clause 57 relates to Schedule 6, which makes provision for changes to the appeals process under the Building Act 1984.

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

483 The Schedule also makes provision for a right of appeal against a local authority decision not

to consider an application for building control approval or initial notice where it relates to higher-risk building work.

Background

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

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

Example 1

A developer wishes to appeal a decision made by the Building Safety Regulator on a building control matter; this will be heard by the First-tier Tribunal rather than the Secretary of State or the magistrates' court. This will create a level of expertise within the First-tier Tribunal to deal with building safety hearings, which previously would have been heard by a local magistrate who may only hear one construction related case per year.

Further notes are provided for this section in Schedule 6.

Clause 58: Fees and charges

Effect

486 Clause 58 allows the Secretary of State to make regulations to enable fees and charges to be levied by both the Building Safety Regulator and local authorities in connection with the exercise of their respective functions under the Building Act 1984 and regulations made under it.

487 The power allows for regulations to prescribe the levels of fees and charges and to make provisions for schemes under which charges are fixed; the principles to be followed in setting up schemes; and to enable different levels of fees and charges to be levied for different purposes.

Background

488 Paragraphs 5 and 9 of Schedule 1 to the Building Act 1984 provide powers for building regulations to be made to enable local authorities to make schemes to set charges for functions which they undertake under the Building Regulations 2010 (as amended). These powers have been used to make the Building (Local Authority Charges) Regulations 2010 (the "Charging Regulations"), as amended.

489 New section 105A of the Building Act 1984 extends these powers to cover all functions exercised by local authorities and the Building Safety Regulator under the Building Act 1984 and regulations made under it. The power in new section 105A enables levels of fees and charges to be prescribed in the regulations or to be fixed in schemes drawn up by local authorities or the Building Safety Regulator in accordance with principles set out in the regulations. This will allow the relevant authority to set levels of fees and charges to take account of their different circumstances. Fees and charges set in schemes will need to adhere to the principles of Managing Public Money. Regulations will be subject to the negative procedure, as are the current Charging Regulations.

490 Paragraph 61 of Schedule 5 to this Bill repeals paragraphs 5 and 9 of Schedule 1 to the Building Act 1984.

Example 1

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

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

Clause 59: Application of amendments

Effect

491 This provision specifies that all amendments to the Building Act 1984, made by Part 3 of this Act and related Schedules, apply to England only.

Background

492 The Building Act 1984 extends to, and applies in, England and Wales. Building regulations is a devolved matter and within the legislative competence of the Senedd, and regulations can be made independently under the Building Act 1984 by the UK and Welsh Government. The UK Government can make amendments to the Building Act 1984 that apply only to England, and therefore do not require legislative consent from the Senedd.

Part 4: Higher-risk buildings

Chapter 1: Key definitions

Clause 60: Meaning of “occupied” and “resident”

Effect

493 The majority of this part of the regulatory regime, apart from obligations relating to the provision of information by Accountable Persons and obligations to apply for registration, will only apply to buildings which meet the definition of ‘higher-risk buildings’ (clause 19) which are “occupied”. The clause defines the meaning of “occupied” and requires that the building is in multi-occupation by two or more resident households for this part to take effect.

494 Subsection (3) of this clause defines who is a “resident” for the purposes of this part and

includes any person who lawfully resides in a dwelling within the building under a contract or licence. For the avoidance of doubt this includes minors and others who have obtained lawful permission to live in a dwelling within the building (subsection (4)).

495 The clause also creates a power for the Secretary of State to amend this definition. The power allows through regulations for the definition to be modified to ensure that the regime is adaptable for the future. Although the regime is expected to cover residential occupied buildings it allows for the scope of this part to be narrowed or extended to align with building safety objectives.

Background

496 This is a new provision.

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

Example 1

From commencement of this part of the Act, the occupation provision will bring multi-occupied residential buildings into the regime. Should a policy rationale become apparent, such as evidence that there are other categories of occupancy in buildings that should also be included in the regime, the Secretary of State could lay regulations to widen the definition.

Clause 61: Accountable person

Effect

498 Clause 61 sets out the definition of an Accountable Person. For the purposes of this part of the Bill they will be responsible for meeting the statutory obligations for occupied higher-risk buildings.

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

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

501 The clause defines common parts in relation to this section and includes the structure and exterior of the building and any part of the building which is provided for the use of the residents in the building, except for those demised to individual dwellings. It also clarifies references to a lease to include right to buy, right to acquire and shared ownership leases.

502 Subsection (5) gives powers to the Secretary of State to amend the definition in the case where more than one Accountable Person is present in a higher-risk building.

503 Subsection (7) gives powers to the Secretary of State to amend the definition as set out in subsections (1) – (5) by way of regulations.

Background

504 This is a new provision.

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

Example 1

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

Chapter 2: Registration and certificates

Clause 62: Occupation: registration requirement

Effect

506 The Accountable Person must apply to register a higher-risk building before it becomes occupied, as defined in clause 60, and commits an offence if they fail to do so. The clause also gives a power to the Secretary of State to prescribe the circumstances in which the Accountable Person must apply to register a higher-risk building and to set out the period, in regulations, within which the application must be made. This will be used for example to specify when and in what circumstances existing occupied buildings will need to be registered.

507 Failing to meet the obligation to register will result in sanctions, if found liable on summary conviction, of an unlimited fine or imprisonment up to 51 weeks, or both. Where there is a continued breach of the obligation a daily fine may be imposed until the Accountable Person has made an application to register the building. There is a defence however where the Accountable Person has a reasonable excuse for why they were unable to make their application by the required time.

508 Subsection (3) sets out the maximum penalty for the criminal offence of breaching the registration requirement. The offence will be triable either way; the broad range of sentencing outcomes gives the courts options to address the different degrees of culpability possible with a strict liability offence. If tried by magistrates, the offence will carry a maximum penalty of an unlimited fine and/or 12 months' imprisonment (six months until the commencement of section 154(1) of the Criminal Justice Act 2003). If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years' imprisonment. Any fine placed on the Accountable Person for a breach of this requirement would not be recoverable from residents

(i.e. through service charges), as set out in the implied terms.

Background

509 This is a new provision

510 It enables the Building Safety Regulator to take a systematic approach to the oversight of buildings in scope of the new regime. Many of the obligations on Accountable Persons in Part 4 of the regime apply where higher-risk residential buildings become occupied. The meaning of “occupied” for these purposes is set out in clause 60. Registration will provide information about the building to the Building Safety Regulator who will then be able to use this for the effective regulation of higher-risk buildings.

Example 1

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

As the new regime comes into force, existing occupied buildings will be transitioned into the new regime. The information from building registration is intended to enable the Building Safety Regulator to consider for instance whether to undertake any regulatory investigation before Accountable Persons have to apply for Building Assurance Certificates.

Clause 63: Registration of higher-risk buildings

Effect

511 Clause 63 makes provisions for registration and applications that must be made by the Accountable Persons.

512 The Building Safety Regulator may include a building on the register of higher-risk buildings if the required information has been provided and must also publish a copy of the register. Subsection (5) allows the Secretary of State, through regulations, to make provision about the register, including the information it contains and the procedure for removing a building from the register. Buildings may be removed from the register where they are no longer occupied, or no longer fall within the scope of the regime as set out in clause 19.

513 Subsection (6) gives the Secretary of State a regulation-making power to set out the requirements of the registration application. This includes the form and content, information and documents to be provided, the way in which the application needs to be made and the circumstances and method for withdrawal of an application.

Background

514 This is a new provision.

515 The Independent Review identified that there should be clear dutyholders during occupation who will have statutory obligations to maintain the fire and structural safety of the building. The registration system ensures that dutyholders identify themselves to the Building Safety Regulator, who is then able to use this information to operationalise compliance and enforcement activity.

516 An important recommendation from the Independent Review was that the name and UK

These Explanatory Notes relate to the Building Safety Bill as published in Draft on 20 July 2020 (Bill CP 264)

contact information of the dutyholder(s) in occupation should be notified to the Building Safety Regulator and to residents and any other landlords of dwellings in the building. Notification of dutyholders' information to the Building Safety Regulator will be accomplished through registration.

Example 1

Before new buildings become occupied, Accountable Person(s) will need to come forward and register their details and that of the higher-risk building with the Building Safety Regulator. Once the applicant has met the requirements of registration, which will be set out in regulations, the Building Safety Regulator will add them to the building register. Regulations will set out the information that would have to be provided with a registration application, which we intend should include an address in England or Wales at which notices can be served on the Accountable Person. The process is likely to be digitalised.

Clause 64: Occupied buildings: requirement to apply for a certificate

Effect

- 517 As part of the new building safety regime, Accountable Persons will be responsible for registering the higher-risk buildings that they are responsible for with the Building Safety Regulator (see clause 62 for the obligation to do so). The Accountable Person will also be required to apply for a Building Assurance Certificate as per this clause.
- 518 The clause enables the Building Safety Regulator to prescribe the period within which an application for the Building Assurance Certificate must be made. Failing to apply for a certificate within this period, without a reasonable excuse for doing so, will result in sanctions. If found liable on summary conviction an Accountable Person can face an unlimited fine or imprisonment up to 51 weeks, or both; and on conviction on indictment can face a fine, imprisonment for up to 2 years, or both.

Background

- 519 This is a new provision.
- 520 The Independent Review identified that there should be clear dutyholders during occupation who will have statutory obligations to maintain the fire and structural safety of the building. The requirement to apply for a Building Assurance Certificate ensures that dutyholders consider their obligations and carry out actions to comply.

Example 1

For new buildings, Building Assurance Certificates given by the regulator are intended to provide an indication to residents that the Accountable Person(s) for their building meet specified statutory requirements at the time of applying for their certificate, including that reasonable steps are being taken under clause 73 to prevent major incidents occurring as a result of building safety risks (as defined in clause 16).

As the new regime comes into force, existing occupied buildings will be 'transitioned' into the new regime and Accountable Persons will need to apply for Building Assurance Certificates in the same way as for new buildings. Again, where they are granted, they are intended to provide an indication to residents that

their Accountable Person met specified statutory obligations including that reasonable steps were being taken under clause 73.

A Building Assurance Certificate would not be issued by the Building Safety Regulator if the Accountable Person was failing to meet the specified statutory obligations. Provisions for this assessment and the subsequent issue of the certificate are set out in clause 65.

Clause 65: Building assurance certificate

Effect

521 Once the Accountable Person has applied for a Building Assurance Certificate as required by clause 64, clause 65 requires that the Building Safety Regulator issues a Building Assurance Certificate if it is satisfied that the Accountable Person has not contravened specific statutory obligations. These obligations include duties to: appoint a Building Safety Manager under clause 67; assess building safety risks under clause 72; take steps to prevent a major incident under clause 73, produce a safety case report under clause 74, give certain information to residents under clause 80 and produce a residents' engagement strategy under clause 82. If after the assessment of evidence provided at the time of application, it transpires that there is non-compliance with the relevant statutory duties the Building Safety Regulator will refuse issuance of the certificate. Subsection (2) details these duties on the regulator. Where the Building Safety Regulator refuses an application it must notify the Accountable Person.

522 Subsection (4) gives a power to the Secretary of State to set out the procedural matters pertaining to the certificate in regulations, including the duration of the certificate, form and content, the way in which it is to be given and the circumstance and procedures for revocation.

523 The circumstances in which a certificate will be revoked are likely to include where the Accountable Person has contravened one or more of the specified duties, such as the duty to appoint a Building Safety Manager.

524 The clause also makes it a requirement that the Accountable Person must display the certificate in a conspicuous position in the building.

Background

525 This is a new provision.

526 The Independent Review identified that residents in higher-risk buildings need assurance in terms of the fire and structural safety of their buildings. Provisions relating to a Building Assurance Certificate help to ensure statutory obligations under the new regime have been met and the display of that certificate within the building provides residents with assurance.

Example 1

The Building Safety Regulator will set out in regulations what information will be included on the certificate. This is likely to be details of the Accountable Person(s) and the Building Safety Manager.

Once displayed in the building, the residents would have assurance about their Accountable Person's compliance with specific statutory obligations and will be able to contact the Building Safety Manager about any issues. The requirement to renew

the certificate will provide periodic assurance.

Clause 66: Applications for certification: further provision

Effect

527 Clause 66 sets out the requirements with regards to the types of information that need to be submitted by the Accountable Person at the time that they apply for their Building Assurance Certificate as set out in clause 65. The application must include a copy of the Safety Case Report, prescribed information about the Accountable Person's Mandatory Occurrence Reporting System for the building in question, prescribed information that demonstrates they are meeting their duties with regards to resident engagement, and prescribed information about the Building Safety Manager. Regulations will set out what prescribed information must include.

528 The clause also includes a regulation-making power which allows the Secretary of State to make further provisions regarding the application process. This includes the form and content, the way in which the application should be made and circumstances and method of withdrawal of applications.

Background

529 The Independent Review recommended that there needs to be a Building Safety Regulator for the whole of the building (referred to as the Joint Competent Authority in the Review) in relation to fire and structural safety in occupation which can hold dutyholders to account with robust sanctions where necessary. The issuance of the certificate provides a start of this process and provides assurance that the Accountable Person is meeting certain of their statutory obligations under the Building Safety Bill at the time of application for the certificate.

Example 1

The clause sets out some of the documents that must be provided with an application for a Building Assurance Certificate, including a Safety Case Report. We intend that the Secretary of State will also make regulations setting out other documents that will be required, with a failure to do so resulting in compliance and enforcement action. If the applicant failed to include such documentation, the Building Safety Regulator could reject the application.

Chapter 3: Building safety managers

Clause 67: Appointment of building safety manager

Effect

530 Clause 67 establishes the role of the Building Safety Manager.

531 The clause imposes an obligation on the Accountable Person to appoint a Building Safety Manager for a higher-risk building. The Building Safety Manager must be appointed prior to occupation of the building.

532 The clause requires that the Accountable Person appoints a Building Safety Manager as soon as reasonably practicable if at any time there is no Building Safety Manager in post for an

occupied higher-risk building. The clause also requires the Accountable Person is able to appoint the Building Safety Manager if the Building Safety Regulator has not given notice to them of its intention to veto and the Accountable Person is satisfied that, where the Building Safety Manager is an individual he or she has the skills, knowledge, experience and behaviours to carry out the role, and where the Building Safety Manager is not an individual that it has the capability to carry out the role's functions.

533 Failing to meet this obligation is an offence. If found liable on summary conviction, the Accountable Person can face a fine or imprisonment up to 12 months, or both. If there is conviction on indictment, the imprisonment term is up to 2 years or a fine (or both). Where there is a continued breach of the obligation a daily fine may be imposed until the Accountable Person has appointed a suitable Building Safety Manager.

Background

534 This is a new provision.

535 The Independent Review identified that there should be a nominated Building Safety Manager for all higher-risk residential buildings. The day to day management of the safety and engagement with residents will be undertaken by this person, and the Accountable Person may wish to appoint itself in the role. The obligation to meet the overarching statutory requirements of the regime sit with the Accountable Person and cannot be delegated to the Building Safety Manager. The Building Safety Manager has its own statutory functions.

Example 1

From commencement of this part of the Act, both empty buildings which will become occupied and existing occupied higher-risk buildings will need to have a Building Safety Manager in place. The Building Safety Manager will be the person on the ground who ensures that the building was managed in line with the safety case and that other statutory obligations are discharged on behalf of the Accountable Person. Whilst the Building Safety Manager might be responsible for carrying out certain duties, accountability will always lie with the Accountable Person. The requirement to register a building will also trigger the requirement to have a nominated Building Safety Manager in place ready for approval. The Accountable Person will need to appoint a Building Safety Manager as soon as reasonably practicable which will help the industry upskill the competency of managing agents and others likely to take on the role.

Clause 68: Regulator's power of veto over appointment

Effect

536 Clause 68 gives the Building Safety Regulator a power of veto in relation to the Accountable Person's appointment of its Building Safety Manager and sets out the circumstances and powers in terms of how this power would be exercised.

537 The Building Safety Regulator may veto the appointment if the Building Safety Manager appears to be unsuitable, but in doing so it must first consult with relevant authorities such as the local fire and rescue service who may be able to provide a view on the appointment.

538 Subsection (6) provides the Secretary of State with a regulation making power. This will be able to make provision for the of notice of veto covering the form and content, delivery to the

Accountable Person and the timescales for that delivery.

Background

539 This is a new provision.

540 The Independent Review identified that there should be a nominated Building Safety Manager for all higher-risk residential buildings. It also recommended that there should be a drive to ensure “dutyholders seek out and employ people that have the appropriate skills and capability and will produce high quality work”.

541 To ensure this Ministers wished to go further and introduce an approval process of the Building Safety Manager. To expedite the appointment process Government intends to implement a power for the Building Safety Regulator to veto the accountable person’s Building Safety Manager. This will ensure that the Building Safety Regulator is able to raise any concerns they might have about the suitability of the Building Safety Managers.

Example 1

Within their application for the Building Assurance Certificate the Accountable Person will need to give details of their proposed appointment of the Building Safety Manager. If the Building Safety Regulator is not satisfied with the proposal or has concerns that the Building Safety Manager is not competent to fulfil the role which they have not been able to address through dialogue with the Accountable Person, then the Building Safety Regulator will issue a notice vetoing the appointment.

Clause 69: Terms of appointment

Effect

542 Clause 69 sets out the tenure of the Building Safety Manager. The clause states that the Building Safety Manager will hold the role by virtue of the contractual arrangements made by the Accountable Person in its appointment.

543 The clause also allows for the Building Safety Manager to resign from its position at any time and for the Accountable Person to terminate the contract, by giving the required notice.

544 Subsection (4) gives a power to the Secretary of State to make regulations about the form and content of notices given under this clause, as well as to define the way in which they are given.

Background

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

Example 1

The Building Safety Manager will be carrying out the day to day functions to ensure that the statutory obligations which sit with the Accountable Person are discharged. However, the Building Safety Manager could choose to resign of its own volition regardless of the statutory nature of the role, and conversely the Accountable Person may find that the service provided by the Building Safety Manager is below standard and choose to dismiss that person. In both circumstances the Accountable

Person would need to contact the Building Safety Regulator to nominate a replacement Building Safety Manager.

Clause 70: Nominated individual

Effect

546 Clause 70 sets out the regulatory circumstances pertaining to the appointment of a person other than an individual as Building Safety Manager. In this circumstance, the Building Safety Manager must appoint an individual nominated person to carry out the functions of the Building Safety Manager as soon as reasonably practicable. If at any time there is no appointed individual in place, the Building Safety Manager must find a replacement as soon as reasonably practicable. The individual must manage the Building Safety Manager's functions, such as the managing the building in accordance with the safety case. The Building Safety Manager must be satisfied that the individual is equipped with the skills, knowledge, experience and behaviours to carry out the nominated individual role.

Background

547 This is a new provision.

548 The Independent Review identified that there should be a named Building Safety Manager for all higher-risk residential buildings. To meet this recommendation the clause sets out the requirement for the appointment of a named individual in circumstances where a corporate body has been appointed as the Building Safety Manager.

Example 1

An Accountable Person may appoint a company as the Building Safety Manager rather than an individual. In those circumstance, the Building Safety Manager must appoint a nominated individual who is sufficiently competent to carry out its functions on its behalf. This would ensure that the building had a named person responsible for the management of safety.

Clause 71: Directions to remove building safety manager or nominated individual

Effect

549 Clause 71 gives a power to the regulator to direct the Accountable Person to dismiss the Building Safety Manager. The Building Safety Regulator must exercise this power when it considers that the Building Safety Manager is not carrying out its role and aiding the Accountable Person in meeting its statutory obligations as set out by Part 4 of the Bill.

550 There are some circumstances where the Building Safety Manager is not an individual and has therefore appointed a nominated individual. The Building Safety Regulator may, in circumstances prescribed in regulations by the Secretary of State, require the Building Safety Manager to change the nominated individual.

551 The clause also gives a power to the Secretary of State to set out provisions in regulations with regards to the direction. This includes the form and content of the direction and delivery of such direction.

Background

552 This is a new provision. The Independent Review identified that there should be a nominated Building Safety Manager for all higher-risk residential buildings. It also recommended that there should be a drive to ensure “dutyholders to seek out and employ people that have the appropriate skills and will produce high quality work”.

553 To ensure this, Ministers wished to go further and introduce a process whereby the Building Safety Regulator is able to direct the dismissal of the Building Safety Manager. This will help to ensure that there is continued regulatory oversight of higher-risk buildings and that Building Safety managers have an incentive to carry out their role to the highest standard. If they do not, they run the risk of dismissal.

Example 1

If upon repeated inspections of a higher-risk building, the Building Safety Regulator is of the opinion that statutory obligations had been breached, and there is the necessary evidence that the Building Safety Manager is responsible for this repeated failure and thus not suitable for the role, it may wish to direct that the Accountable Person should dismiss its appointed Building Safety Manager. This is likely to be a course of action where the Accountable Person has failed to take its own steps to manage the performance of the Building Safety Manager.

Chapter 4: Duties relating to building safety risks

Clause 72: Assessment of building safety risks

Effect

554 Clause 72 provides that every Accountable Person is under an ongoing obligation to carry out an assessment of the building safety risks in/of/arising from a higher-risk building for which they are responsible. The definition of building safety risks is that provided for in clause 16. The assessment must be suitable and sufficient so that the Accountable Person is able to comply with their safety duties imposed by this Part of the Bill including to take steps to prevent and mitigate major incidents, prepare a Safety Case Report and provide information about the building to other persons (under clauses 73, 74 and 80, respectively).

555 This duty will apply as soon as the building is in multiple occupation by residents and the first assessment must be carried out as soon as it is reasonably practicable after that point. New Accountable Persons must carry out their risk assessment as soon as it is reasonably practicable to do so after having become the Accountable Person.

556 Further assessments must be carried out by the Accountable Person at regular intervals, when directed to do so by the Building Safety Regulator, when notified by the Building Safety Manager of a suspicion the assessment is invalid or additional control measures are required, and when the Accountable Person suspects the assessment is no longer valid or they become aware of a significant change to the building.

557 The Accountable Person is defined in clause 61 as a person with a legal estate in possession of any part of the common parts of a higher-risk building. The definition of occupied is set out in clause 60 and means where there is at least one resident in two or more flats or premises in the building.

Background

558 This is a new provision.

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

Example 1

Both higher-risk buildings that have passed through the Gateway process and are recently occupied as well as existing higher-risk buildings that have long been occupied by residents will be covered by clause 72.

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

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

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

The Accountable Person should conduct a reassessment of the building safety risks following notification by the Building Safety Manager that they believe the assessment to be invalid or that further control measures are required to manage the risks. An example of how and when this should be carried out is included under

clause 76 management of the building by the Building Safety Manager.

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

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

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

Clause 73: Steps to prevent a major incident

Effect

561 Clause 73 imposes an ongoing duty on Accountable Persons to take all reasonable steps and actions necessary to ensure the prevention of major accidents and/or fires arising from the building safety risks and the reduction in severity of any such accident or fire.

562 The duty to take the necessary steps will apply as soon as the building is occupied. Any necessary steps must be taken promptly.

563 This duty will run parallel to that of needing to undertake a suitable and sufficient risk assessment, under clause 72.

564 To make informed decisions, the Accountable Person should have identified the hazards within their building in accordance with their risk assessment duty, decided who might be harmed by those hazards, evaluated the likelihood and consequence of those hazards becoming a major incident. This clause then requires the Accountable Person to decide on and take all those steps or measures that are reasonably needed to both prevent the hazards becoming a major incident and to mitigate the severe impact of such an incident on those in or around the building.

565 When deciding on the measures needed to meet the duty, The Accountable Person must have regard to a set of principles, set out in regulations, ordered to form a best practice approach to risk management, from most efficient to least efficient, the most efficient being to avoid risk.

566 Where those measures prove insufficient, the Building Safety Regulator will have the power to direct the Accountable Person to take the steps needed in order to comply with the duty.

567 The Accountable Person is under an ongoing duty to ensure these measures are kept under review and Subsection (6) requires a systematic approach to be adopted, that is used in other risk management frameworks, to ensure the Accountable Person fully understands the measures employed and that those measures remain appropriate and effective whilst the building is occupied.

Background

568 This is a new provision

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

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

Example 1

Both higher-risk buildings that have passed through the Gateway process and are recently occupied as well as existing higher-risk buildings that have long been occupied by residents will be covered by clause 73. The Building Safety Regulator will have the power to issue guidance as to how those building safety risks may be managed and mitigated to an acceptable level and relevant factors to be taken into account in assessing what it is reasonable/ practicable to do and what circumstances may be relevant.

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

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

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

A key control measure, to ensure that the existing protective measures continue to provide safety, is to subject contractors to a building safety induction, tailored to the specific building. On checking the induction pack, the Building Safety Manager realises that the training materials are out of date. The Building Safety Manager escalates this to the Accountable Person, because the training materials are derived

from a package used throughout the organisation. The Accountable Person updates the induction pack across the organisation, with the Building Safety Manager tailoring the package to accurately reflect the specific building. The Accountable Person makes resident safety the focus of the induction pack and the Building Safety Manager can use the content to populate sections of the Resident Engagement Strategy. As part of the system for ongoing management of risk, the Building Safety Manager includes a regular review of training materials to make sure they remain relevant and up to date.

Example 2

There may be instances where the Accountable Person and the Building Safety Manager, as a first step, need to gather intelligence on the safety measures designed into the building. The building may be a stock transfer from a housing association that was subject to a management takeover. The building safety information handed over might be incomplete. There might be no evidence supporting the fire resistance of fire compartments, which have been assumed based on what should be there, rather than what is actually present. In this instance, they might contract for invasive structural surveys to give them a reliable starting point and evidence for the baseline resistance of the building to a major fire or structural collapse.

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

Example 3

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

Example 4

In examples below, the risk assessment undertaken for the purposes of complying with clause 72 highlights necessary steps to reduce (or further reduce) building

safety risks:

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

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

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

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

Clause 74: Safety case report

Effect

571 Clause 74 provides that the Accountable Person is under a duty to produce a Safety Case Report that demonstrates that they have both assessed the building safety risks and taken all reasonable steps to prevent major incidents arising from those risks and to reduce the severity of such incidents for any higher-risk building for which they are responsible. A major incident arising from the building safety risks is defined in clause 73(7) as an incident resulting in a significant number of deaths or serious injury to a significant number of people.

572 The duty to prepare a Safety Case Report containing the Accountable Person's assessment of the building safety risks relating to the building and any steps taken under clause 73 starts to apply as soon as the building is occupied. Regulations may also be made by the Secretary of State under the power in subsection (3) to set out other requirements about the form and

content of Safety Case Reports.

- 573 Once the Accountable Person has written their Safety Case Report, they must notify the Building Safety Regulator, under clause 75.
- 574 The Safety Case Report will be the vehicle through which the Accountable Person is able to demonstrate compliance with their ongoing duty to take all reasonable steps to prevent a major incident arising from the building safety risks and reduce the severity of any incident. The clause provides a duty on the Accountable Person to revise it following any further assessments of the building safety risks relating to the building under clause 72 and following the taking of any further steps under clause 73. The intention is that at any point the Safety Case Report demonstrates that the arrangements the Accountable Person has in place are reasonable for managing their specific building. Where there is a change to the Accountable Person, there is a requirement for the new Accountable Person to prepare a Safety Case Report as soon as reasonably practicable after becoming the Accountable Person.
- 575 The Safety Case Report can be reviewed and revised under an Accountable Person's own volition however the clause also provides a power for the Building Safety Regulator to direct the Accountable Person to review the Safety Case Report.

Background

- 576 This is a new provision.
- 577 The Independent Review recommended new responsibilities should be placed on dutyholders to proactively manage risks and work with residents to ensure that the building remains safe throughout its life cycle. It set out that the dutyholder should do this by undertaking regular safety case reviews of the building in which they must demonstrate to a regulator that they are reducing building safety risks.
- 578 The new 'safety case review' system is therefore the main way that the Building Safety Regulator will hold the Accountable Person to account for identifying the hazards and risks in their building, describing how risks are controlled and describing the safety management system in place so that building safety risks are reduced and all reasonable steps are taken to prevent major incidents arising from building safety risks.
- 579 Safety case requirements are employed in many high hazard industries. They provide the means by which dutyholders demonstrate to themselves and regulators that they are effectively identifying and managing risks to an acceptable level. In these regimes the regulator gives permission to a dutyholder to carry out certain categories of intrinsically high-hazard work. In a safety case review system, the dutyholder provides information to the regulator to demonstrate that they have considered what could go wrong in an installation, what the worst case scenarios are, the consequences if those scenarios are realised and to show that they have preventive, protective and reactive measures in place to manage the risks of the scenarios occurring. When the regulator is content that the dutyholder has fulfilled the relevant requirement(s) they 'permit' operation and subsequently seek reassessments for any significant changes as well as reviewing safety case reports on a routine cycle.
- 580 In the context of managing building safety risks in higher-risk buildings, the Accountable Person will therefore make the claim that the building is safe for occupation (meets the outcome of clause 73), argue that the sum of the measures they have in place support that claim, that decisions have been taken in accordance with the prescribed principles and direct the reader to the evidence that supports that argument.

Example 1

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

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

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

From commencement, if a building is occupied by residents in more than one dwelling, the Accountable Person has an obligation to assess the building safety risks relating to the building and to take all reasonable steps and actions necessary to ensure the prevention of major incidents arising from the building safety risks and the reduction in severity of any such incident (clauses 72 and 73). They are also under a duty to produce a Safety Case Report to demonstrate how they have complied with these obligations.

Therefore, having undertaken the required risk assessments, surveys, analysis etc. and decided on and implemented necessary control, reduction and mitigation, the Accountable Person must produce a Safety Case Report, which should summarise the findings and demonstrate how the duties in clauses 72 and 73 are being met.

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

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

A well-structured and coherent Safety Case Report will allow the Accountable Person to demonstrate that they have a good understanding of the factors that influence risk and the controls required to minimise the chance of risks causing harm to people.

The Safety Case Report must be specific to the building in question, a generic report is not acceptable. It will describe the building, set out the hazards and risks that have been identified and the arrangements in place for controlling and managing those. It is important for the Safety Case Report to explain why the measures employed were chosen, why they are suitable to the level of risk in the building and how the Accountable Person is implementing them. The adopted control measures must be shown to collectively control the risks and reduce them so that major incidents will be prevented, and their severity reduced.

The Safety Case Report must also explain the management systems the Accountable

Person has implemented to ensure the safety arrangements remain fit for purpose and that the risks are managed consistently and on an ongoing basis. It should also explain the emergency plans that would be relied on if something did go wrong and there was a failure in the safety arrangements.

Clause 75: Notification and provision of report to the regulator

Effect

581 As soon as the Accountable Person has complied with the duty to produce a Safety Case Report as described in clause 74, they must notify the Building Safety Regulator. The notification must be sent as soon as reasonably practicable.

582 When a Safety Case Report is revised, owing to a change in building safety risks, a change to the Accountable Person or a change to the steps the Accountable Person is taking to manage those risks, the Accountable Person has to notify the Building Safety Regulator.

583 The Safety Case Report can then subsequently be reviewed and revised under the Accountable Person's own volition (clause 74), however this clause also provides a power for the Building Safety Regulator to require the Accountable Person to send in their Safety Case Report for review by the Building Safety Regulator. If requested by the Building Safety Regulator, the Safety Case Report must be provided by the Accountable Person as soon as is reasonably practicable.

584 This clause also gives a power to the Secretary of State to set out in secondary legislation, with accompanying guidance, the form and process that a notification will need to follow in order to enable the Building Safety Regulator to make a decision as to whether the Safety Case Report needs to be called in for assessment.

Background

585 This is a new provision.

586 The Independent Review recommended new responsibilities should be placed on dutyholders to proactively manage risks and work with residents to ensure that the building remains safe throughout its life cycle.

587 The new safety case review system, is the main way that the Building Safety Regulator will hold the Accountable Person to account for identifying the hazards and risks in their building, describing how risks are controlled and describing the safety management system in place so that building safety risks are reduced and kept to an acceptable level.

Example 1

Once the Accountable Person has complied with the steps in clause 74, they must notify the Building Safety Regulator. In the context of higher-risk buildings within the scope of the new regime, the Accountable Person will therefore notify the regulator that they are able to make the claim that they are meeting the requirement of clause 73, argue that the sum of the measures they have in place support that claim and direct the reader to the evidence that supports that argument.

The Building Safety Regulator can decide whether to assess the Safety Case Report at this stage or whether to assess it when provided as part of an Accountable Person's

application for a Building Assurance Certificate, as described in clause 65.

An example as to when the Building Safety Regulator might exercise its power request the Safety Case Report would be where an incident in another building reveals a major incident scenario not previously considered or where recommendations have been made following a major accident or public inquiry.

The review of the Safety Case Report is likely to involve the Building Safety Regulator assessing not only whether the Report complies with the requirements of clause 74 and regulations made under it, but also whether it suggests compliance with the obligations in clauses 72 and 73. This might for instance include an assessment of whether the steps being taken under clause 73, both technical and procedural, remain appropriate in light of new knowledge or requirements.

The Accountable Person might notify the Building Safety Regulator that they have made revisions to the Safety Case Report to accommodate new steps in the light of recommendations from an inquiry. Upon receiving the notification, the Building Safety Regulator could request submission of the revised Safety Case Report and assess it. Where the regulator has reason to suspect from this assessment that the steps taken are deficient, it will be open to it to, for instance, inspect the building to investigate further. If the inspection confirms the deficiency in the steps employed, the Building Safety Regulator will work with the Accountable Person to remove the deficiency; it has the power, where necessary, to direct the Accountable Person to take these measures under clause 72 and/or to issue a compliance notice under clause 91 requiring contraventions of the Accountable Person's obligations to be remedied.

Clause 76: Management of the building by the building safety manager

Effect

588 Clause 76 places an obligation on the Building Safety Manager to manage an occupied building within the scope of the new regime in accordance with the Safety Case Report for the building. The Building Safety Manager is also required to inform the Accountable Person if they believe that the assessment of building safety risks is invalid or further steps are required to control the risks.

Background

589 This is a new provision.

590 The Independent Review identified that a new approach, built on existing risk management principles, was needed for managing risks to residents in higher-risk buildings. This is to ensure that the whole of a higher-risk building is properly, regularly and proactively considered by a dutyholder against the principles of what is reasonably practicable to reduce risk. This duty – to assess and manage building safety risks – falls on the Accountable Persons for building in scope of the new regime.

591 Linked to the assessment, the Accountable Person is under a duty to produce a Safety Case Report that demonstrates that they have assessed the building safety risks and taken all reasonable steps to manage those risks. In line with the Independent Review, the day-to-day management of the building sits with the Building Safety Manager. This clause requires the

Building Safety Manager to manage the building in line with the report that the Accountable Person has produced. The clause also places a duty on the Building Safety Manager to inform the Accountable Person that they need to carry out a further assessment of the risks, should the Building Safety Manager suspect that the safety case report needs to be revised owing to a change in the building.

Example 1

Both higher-risk buildings that have passed through the Gateway process and are recently occupied as well as existing higher-risk buildings that have long been occupied by residents will be covered by clause 76.

Having conducted a full assessment of building safety risks, taken the necessary steps to prevent major incidents caused by building safety risks and produced a Safety Case Report to demonstrate these duties have been met (under clauses 72, 73 and 74 respectively), the Accountable Person will in practice rely on the Building Safety Manager for the day-to-day management of the building. This is likely to include an expectation that the Building Safety Manager can be relied upon to immediately alert the Accountable Person if they are concerned the assessment of risks has become invalid or the steps to control them insufficient. This clause makes it an obligation for the Building Safety Manager to do so.

For example, the Building Safety Manager might become aware from conducting site visits that numerous residents leave bicycles and prams outside their front doors, in communal areas. The issue seems to be systemic across the building and the Building Safety Manager is concerned that residents do not appreciate the risks this poses. This hadn't been accounted for when the last risk assessment was carried out, and the steps to manage building safety risks set out in the Safety Case Report are based on an expectation that communal corridors will be kept clear of obstacles at all times. The Building Safety Manager therefore draws this to the attention of the Accountable Person.

Clause 77: Duty as regards building insurance

Effect

592 Clause 77 gives the Secretary of State the power to make regulations requiring the Accountable Person for a high-risk residential building to ensure there is adequate insurance to cover losses associated with building safety risks occurring. It also gives the power for regulations to prescribe the kinds of losses arising from building safety risks that such insurance should cover.

593 Subsection (2) sets out that compliance with this clause requires there to be a contract for building insurance in place, of a kind that complies with the requirements as set out in regulations made under subsection (1).

Proposed use of power

594 The Government recognises the need for insurance against the materialisation of building safety risks, and the subsequent funding of remediation work or compensation. The Secretary of State will use its delegated powers to implement insurance requirements that help to ensure building safety.

Background

595 This is a new provision.

596 Not all residential buildings have adequate buildings insurance in place, to ensure that funds are available for urgent works or compensation where losses arise because of building safety risks in a high-risk residential building due to building safety risks materialising as identified as part of the safety case. This clause enables regulations to be made requiring such insurance to be in place.

597 The Accountable Person will need to ensure that there is adequate insurance cover in relation to building safety matters for their higher-risk residential building.

Example 1

Where an Accountable Person for a high-risk residential building fails to have (any, or adequate) buildings insurance to cover loss associated with building safety risks (or losses of a kind described in regulations), the Building Safety Regulator may serve a compliance notice requiring such insurance to be procured. Failure of the Accountable Person to take steps to adhere to a compliance notice could lead to fines and/or court action in accordance with clause 91(6).

Chapter 5: Duties relating to information and documents

Clause 78: Mandatory reporting requirements

Effect

598 Clause 78 places a duty on the Building Safety Manager to report information related to the safety of an occupied building to the Building Safety Regulator in a manner prescribed by the Secretary of State.

599 The clause also places a duty on the Accountable Person to establish and operate a system that will enable reportable information to be given to the Building Safety Manager. This system will be assessed as part of the Building Assurance Certificate application.

600 The power is flexible as it is expected that reportable information may be varied and subject to change over time in line with developments of the safety landscape of buildings.

601 Information submitted in an occurrence report cannot be used as evidence in criminal proceedings against any person, except in relation to non-compliance of the report maker with the duty to report under subsection (1). Information from reports can, however, be used by defendants in their own defence. An equivalent provision will be made in building regulations for the design and build phase.

Proposed use of power

602 It is intended that the power given to the Secretary of State will be used to require the Building Safety Manager to report certain structural and fire safety occurrences to the Building Safety Regulator as part of a Mandatory Occurrence Reporting scheme, similar to those that exist in other industries such as aviation. This will involve the Building Safety Manager reporting to the Building Safety Regulator any structural and fire safety event that occurs within a higher-risk building and which causes a significant risk to life safety.

603 Secondary legislation will include a list of categories of occurrences which must be reported to the Building Safety Regulator. This list will be compiled based on occurrences which, if they

were to occur within a higher-risk building, would likely meet the threshold of a significant risk to life safety. Guidance will be provided to the Building Safety Manager to assist them in determining whether an occurrence falls within the categories laid out in secondary legislation.

604 The specified manner of reporting will likely be via an online portal. Current proposals for the timeframe for reporting are three working days from the time an occurrence is noticed.

Background

605 This is a new provision.

606 The Independent Review recommended that it should be mandatory for key dutyholders to report particularly dangerous safety-related events to the Building Safety Regulator. This section contributes to the fulfilment of this recommendation.

Example 1

The list of occurrences specified in secondary legislation may include the discovery of a structural safety or fire safety related defect. If the Building Safety Manager discovered during a test of the fire response system that the fire alarms did not operate as expected, then the Building Safety Manager must report this to the Building Safety Regulator via an online portal.

Clause 79: Keeping information about higher-risk buildings

Effect

607 The new regulatory regime will regulate building safety risks in higher-risk buildings. This clause places requirements about information keeping on the person responsible for higher-risk buildings - the Accountable Person. Higher-risk building is defined in clause 19.

608 This clause imposes a requirement that the Accountable Person must keep and maintain certain required information about the building (the prescribed information) and ensure it is up to date as far as possible. If the Accountable Person does not have the prescribed information this clause imposes a requirement that they obtain this information, unless it is not practicable for them to do so.

609 The prescribed information is also called the “golden thread” of information. The specific documents, data and information that will make up the prescribed information will be set out in regulations.

610 The prescribed information will generally be information about the building and information relevant to the management and reduction of building safety risks (as defined in clause 16) in the building.

611 This clause also imposes a requirement that the prescribed information must be kept in accordance with prescribed standards. Regulations will set out the standards to which the information should be stored and kept, to ensure the information is accessible.

612 The Building Safety Regulator will also be able to issue statutory guidance about how to comply with the duties in this clause under the power set out in clause 101(1)(c). The guidance will provide best practice examples and detail to support the Accountable Person in fulfilling their duties under this clause and the regulations.

613 Regulations may also be made under this clause to set out when the duties to keep and obtain

the prescribed information will apply.

Proposed use of power

614 Regulations made under this clause will set out what the “prescribed information” is and what “prescribed standards” it needs to be stored/kept in accordance with, and when the duties to do so will apply.

Background

615 This is a new provision.

616 The Independent Review identified that a golden thread of information would ensure more effective building safety management throughout a building’s life cycle. Therefore, it is important to ensure that the persons responsible for building safety maintain and have access to accurate and up to date information.

617 Requiring the prescribed information to be stored to the prescribed standards will improve the accessibility of this important information which is likely to be key in enabling compliance by the Accountable Person with their safety case-related duties in clauses 72-75.

Example 1

Information that must be obtained, kept up to date and in accordance with prescribed standards could for example include information about the alarm system that is installed in the building and when it was last tested or information about where the fire stopping is in the building. This information must be stored digitally (to the required prescribed standards set out in regulations and exemplified in statutory guidance). This information can then be used for example to inform the Accountable Person’s risk assessment under clause 72. Capturing the information and storing it in an accessible fashion will also ensure that those working on the building can be made aware of key aspects of the building that may be affected by their work.

Clause 80: Provision of information etc to the regulator, residents and other persons

Effect

618 Clause 80 sets out that the Secretary of State may make regulations requiring the Accountable Person to share prescribed information and documentation about their building in certain prescribed circumstances. It will also enable the Secretary of State to make regulations to make exceptions to any duty imposed under the regulation, as well as set out the manner, form and standards which must be met in provision of this information and documentation.

619 The clause sets out that the Accountable Person may be required to provide prescribed information, or copies of that information, to the Building Safety Regulator, to residents of the building and owners of flats in the building, and it also allows regulations to be made setting out other types of person who it should be supplied to.

620 Residents means all adults lawfully residing at the property This clause also extends to the legal owner (where this is not the same as the residential occupier) of an individual dwelling, for example a non-occupying leasehold landlord who is renting out an individual flat.

Proposed use of this power

621 Regulations under this clause will set out the circumstances in which an Accountable Person for a higher-risk building must provide others with the prescribed information and documentation about the building. This will include a requirement to provide all new residents with a range of building safety information, and requirements to provide the regulator with information about the building, such as information about the Building Safety Manager as required. Regulations will also lay out what information or documentation must be shared, the form of the prescribed information, the way in which it must be given, the standard to which it must be given, and any exceptions to any duty imposed under the regulations.

Background

622 This is a new provision.

623 The Independent Review identified the importance of accurate and up to date information for ensuring building safety. The availability and accessibility of this information to the regulator and residents is crucial to ensure people feel safe in their homes and ensure those responsible for building safety are held to account. This clause and clause 79 are intended to help ensure that residents, the regulator and other persons have this information, and those who need to be are provided with relevant information about that particular building.

624 Regulations under this clause will also set out the circumstances when the Accountable Person must provide information to the regulator and the form in which this information should be submitted. Regulations may also make requirements to ensure information is presented to the regulator in a standard format as this will enable the regulator to more easily review and analyse the information. This will support the regulator in their role in ensuring building safety and holding Accountable Persons to account.

Example 1

The Accountable Person for a higher-risk residential building must collect and maintain information relevant to the safety of that building (prescribed information). They must provide prescribed information from this to their residents. When a person purchases a leasehold flat within their property, the building owner must ensure the new leaseholder is provided with the prescribed information.

Clause 81: Provision of information etc to a new accountable person

Effect

625 Clause 81 applies where the Accountable Person for a higher-risk building changes. It relates to clause 79, and regulations made under that clause which will set out 'prescribed information' that must be obtained, kept up to date and kept in accordance with specified standards. This prescribed information is also known as the golden thread.

626 This clause sets out that an 'outgoing Accountable Person' i.e. one who is selling or otherwise changing their interest in the building so that they are no longer an Accountable Person must provide certain information, or copies of certain documents, to their successor, the 'incoming' Accountable Person.

627 This clause gives the Secretary of State the power to issue regulations setting out the information that must be provided by the outgoing Accountable Person, the circumstances when they must provide it, the timescale within which they must do so and any standards that the information must be provided in accordance with.

628 Not complying with these requirements will be an offence and the clause sets out the maximum penalties for conviction including daily fines for ongoing contravention.

Proposed use of power

629 Regulations under this clause will set out the circumstances in which an Accountable Person for a higher-risk building must hand over the prescribed information about the building. In particular, these will provide for when an outgoing Accountable Person must provide the prescribed information to the incoming Accountable Person, what that information should contain and standards that it must accord with.

Background

630 This is a new provision.

631 The Independent Review identified that a 'golden thread' of good quality information would ensure more effective building safety management throughout a building's life cycle. Therefore, it is important to ensure that provisions are made so that golden thread information is provided by one Accountable Person to those who purchase or obtain an interest in the building from them. Penalties are available where the Accountable Person does not comply.

Example 1

The Accountable Person for a higher-risk building has to collect and maintain information relevant to the safety of that building (prescribed information). When they sell the building, they must ensure that all this information is handed over to the buyer. Requirements setting out how the information is stored, and the format of the information are intended to make this information accessible to new owners.

Chapter 6: Engagement with residents etc

Clause 82: Residents' engagement strategy

Effect

632 Clause 82 requires all Accountable Persons to produce a Resident Engagement Strategy to promote the participation of residents and flat owners in the decision-making about building safety risks in their building. The high-level requirements for meeting this obligation are set out in subsection (3) and confirm that the Strategy will need to include the information that the Accountable Person will provide to residents, the scope of what they will consult residents about, the methods the Accountable Person will use to seek residents' views and details of how they will measure the effectiveness of their strategy.

633 The Secretary of State will also have the power to make regulations to change or provide more detail on the requirements for the Resident Engagement Strategy. We also envisage these provisions will be supported by Good Practice Guidance to provide practical help to Accountable Persons in developing their Strategy including worked examples and templates, for which the Residents Panel should be one of the statutory consultees (see clause 11).

Background

634 This is a new provision.

635 The Independent Review found that residents did not have a strong enough voice in the safe management of their homes and specifically that they often did not have the chance to offer

views and participate in the decision-making process. This requirement is designed to tackle that by placing an obligation on all Accountable Persons to have a Resident Engagement Strategy that sets out how they will deliver inclusive resident participation and involvement as well as measuring its effectiveness and making improvements as necessary.

Clause 83: Requests for further information

Effect

636 Clause 83 provides that the Accountable Person shall provide further and more detailed information or documentation about a building's safety systems to a resident on request. A list of the more detailed safety information and documentation that can be obtained on request will be set out in regulations to be made by the Secretary of State. The regulations may also make provision about:

- The way in which information or a copy of a document must be provided under this section;
- The form in which information is to be provided under this section, and may in particular require that the information is provided in an accessible form.

637 The Secretary of State may also make regulations which set out the circumstances when an Accountable Person is exempt from the requirement in this provision to make a copy of a document available or some or all of the information requested.

Background

638 In addition to recommending that residents should automatically receive key building safety information, the Independent Review also recommended that further and more detailed information about the safety of their building should be made available to any resident on request. The further information to be provided under this clause will be set out in regulations and is currently envisaged to comprise the following:

- Full, current and historical fire risk assessments;
- Planned maintenance and repairs schedules;
- Outcome of Building Safety inspection checks;
- How assets in the building are managed;
- Details of preventive measures;
- Fire protection measures in place;
- Information on the maintenance of fire safety systems;
- Fire strategy for the building;
- Structural assessments; and
- Planned and historical changes to the building.

639 The clause also provides that the Secretary of State may make regulations setting out the circumstances when an Accountable Person is exempt from the requirement to make some or all of this information or documentation available. The exemptions are envisaged to be as follows:

- The security of the building and/or the residents of that building, for example technical and operational information about the lifts in a building. That information could be misused by someone who wanted to cause damage to the building and/or harm to residents;
- The security of other buildings in the vicinity, for example, information about the technical system that controls sprinklers in a building. Disabling the sprinkler system could have a negative impact on surrounding buildings because of the risk of fire spread;
- Intellectual property rights or commercial confidentiality. This could include proprietary information to which a third party has intellectual property rights;
- Individual residents through the release of personal information about them, for example, the nature and extent of any vulnerabilities an individual resident may have.

Clause 84: Complaints procedure: accountable person

Effect

640 Clause 84 requires all Accountable Persons to establish a complaints process and system for residents and flat owners to raise safety concerns and for the Building Safety Manager to then handle all complaints in line with that process. More detail on the requirements will be set out in secondary legislation, including but not limited to the process for making a complaint, the need for a timely response and the points at which a complaint should be referred to the Building Safety Regulator for consideration.

Background

641 This is a new provision to increase transparency and strengthen complaints handling in higher-risk Buildings.

642 The Independent Review found that residents did not have a strong enough voice in the safe management of their homes and specifically that they often struggled to get their complaints addressed. This requirement is designed to tackle that by placing an obligation on all Accountable Persons to have a transparent, clear and effective complaints process for residents to use when things go wrong.

Clause 85: Complaints procedure: regulator

Effect

643 Clause 85 requires the Building Safety Regulator to establish and operate a complaints procedure and system to handle resident's safety concerns escalated to them either direct by the resident or via the Accountable Person or Building Safety Manager. In establishing or making changes to their complaints process the Building Safety Regulator must consult with the Residents Panel which will be established as one of their Advisory Committees - see clause 11 for more detail.

644 More detail on the requirements for the establishing and operating of the Building Safety Regulator's complaints process will be set out in secondary legislation including but not limited to the process for escalating a complaint to the regulator, the need for a timely response and the set of actions available to the regulator on receipt of a complaint.

Background

645 This is a new provision to increase transparency and strengthen complaints handling in higher-risk buildings, as defined in clause 19.

646 The Independent Review found that residents did not have a strong enough voice in the safe management of their homes and specifically that they often struggled to get their complaints addressed. This requirement is the second part of tackling that systemic weakness and closely links to clause 84. It is designed to make sure that residents have an effective escalation route to the Building Safety Regulator where the Accountable Person has not resolved their safety concerns.

Chapter 7: Residents' duties

Clause 86: Duties on residents

Effect

647 Clause 86 provides that a resident of a higher-risk building (aged 16 or over) must:

- Keep any relevant resident's item in repair and proper working order;
- Take reasonable care not to damage any relevant safety item;
- Comply with a request from an Accountable Person to provide information reasonably required for the Accountable Person to perform their duties to carry out an assessment of building safety risks and take steps to reduce those risks; and
- Comply with such other duties as may be prescribed.

648 In this clause "Relevant resident's item" means any electrical or gas installation or appliance in a dwelling, other than those which somebody else has responsibility for. "Relevant safety item" means anything in the common parts of a building that is intended to improve the safety of anyone in the building or its vicinity, for example, signage, sprinklers, smoke alarms.

649 The clause permits an Accountable Person to serve a notice on a resident of a higher-risk building where it appears that they have not complied with one or more of the duties listed above.

650 A notice under this clause is a notice that specifies:

- What the resident has supposed to have done and why this is a breach of one or more of their duties;
- What action the resident should take so that they are no longer in breach and the deadline for doing so;
- Anything the resident should not do to avoid further breaches of the duty; and
- What may happen next if the resident fails to comply with the notice

651 The clause further provides that the Secretary of State may make regulations about notices under this section, including:

- Details about the form of a notice and the way it is to be given; and
- Further provision about the content of the notice.

652 Following service of a notice on the resident, the Accountable Person may request the county court to make an order. The court will make an order provided that it is satisfied that:

- A notice has been served on the resident;
- The resident has breached the duty alleged in that notice; and
- It is necessary to make the order.

653 An order made by the county court under this clause may require a person:

- To provide specified information, or do a specified thing, within a certain timescale;
- Not to do a specified thing.

Background

654 The Independent Review recommended that residents should have a clear understanding of their responsibilities in relation to helping to keep their building safe. This clause sets out a number of duties which must be complied with by residents. It also sets out the process that an Accountable Person will follow to enforce those duties in the event of non-compliance, including formal action through the courts.

Example 1

A leaseholder of a flat will be responsible for ensuring that any gas boiler in the dwelling is regularly serviced and kept in good working order. Where an Accountable Person has reasonable grounds for believing that the leaseholder is failing to keep their boiler in good working order, they may serve a notice to require the person to have the boiler checked by a gas engineer. If the resident refuses to do so, the Accountable Person could seek an order from the county court requiring the resident to have their boiler checked.

Clause 87: Access to dwellings etc

Effect

655 This clause provides that the county court may, following an application by the Accountable Person for an occupied higher-risk building, make an order in respect of any dwelling in the building provided that it is satisfied:

- The Accountable Person has made a written request seeking permission to access dwelling;
- The request is either made in connection with the Accountable Person's duty to assess building safety risks or in connection with duties on residents and owners;
- Entry to the dwelling has not been permitted; and
- The order needs to be made so that the Accountable Person is able either to determine whether a resident has breached their duties, or so that the Accountable Person is able to perform the relevant duty for which access is required.

656 An order made under this section:

- Requires the resident to allow the accountable person, or a person authorised by them, access to the dwelling at a reasonable time on a specified date or within a specified period; and
- May, if it appears to the court necessary, permit the taking of measurements, photographs, recordings or samples.

Background

657 Residents of higher-risk buildings are required to comply with a range of duties designed to ensure that the Accountable Person is able to effectively discharge their duty to minimise the risk of fire or structural safety risks so far as is reasonably practicable. Those duties are as follows:

- Keep in repair and proper working order any relevant resident's item,
- Take reasonable care to avoid damaging any relevant safety item,
- Comply with a request made by the accountable person for information reasonably required for the purposes of their duty to assess building safety risks and take reasonable steps to minimise them; and
- Comply with such other duties as may be prescribed.

658 The Accountable Person may need access to one or more dwellings in the building so that they can satisfy themselves that the resident is complying with a specified duty, or in order to perform their own duties to assess building safety risks and take reasonable steps to minimise them.

Example 1

A situation where this power may need to be exercised is where the Accountable Person has reasonable grounds for believing that a resident has failed to ensure that gas installations in the dwelling are been maintained and kept in good working order. The Accountable Person may seek access to the dwelling in order to check whether or not the installation is in fact being maintained and kept in good working order.

Chapter 8: Recovery of safety related costs

Clause 88: Higher-risk buildings: implied building safety terms

Effect

659 Leases of flats generally make provision for the landlord to carry out works and provide services to the building, and for the leaseholder to pay a proportion of the costs involved through a service charge. What the landlord can be called upon to do, and the costs that the leaseholder can be required to contribute towards, depend on the precise wording of the lease in question. The wording of leases varies from building to building. This clause implies terms into all relevant leases to ensure that all contain appropriate and consistent arrangements in relation to carrying out, and recovering the costs of, building safety measures.

660 This clause amends the Landlord and Tenant Act 1985 to imply terms into every long lease of a higher-risk building so that every landlord will owe duties to each leaseholder regarding building safety measures and each leaseholder will owe corresponding duties to the landlord.

661 The landlord's duties are to carry out the appropriate safety measures, as Accountable Person. The provisions allow the landlord to re-charge to the leaseholders the cost of building safety measures. The leaseholders' duties are to pay their fair share of the reasonable costs, to cooperate with the Accountable Person and to allow access where necessary.

Details of the clause

17A Implied building safety terms

662 New section 17A sets out the terms (covenants) which are implied in a long lease of a dwelling in a higher-rise building. The landlord covenants that any building safety charges will be levied in accordance with new statutory procedures in 17F; to carry out/cooperate with Accountable Person in carrying out building safety measures; to cooperate with any Special Measures Manager that may be appointed; and to take all reasonable steps to apply for any financial support that may become available to mitigate building safety costs. The section also sets out the covenants on the part of the leaseholder in relation to paying the reasonable building safety charges demanded, allowing access to their property where needed for building safety purposes and complying with the duties on residents provided for in the Bill.

17B Meaning of long lease

663 New section 17B defines a long lease as a lease granted for a term of over 21 years, including Right to Buy and Right to Acquire leases granted to former social housing tenants and also shared ownership leases. It makes reference to the relevant housing legislation in doing so.

17C Restrictions on contracting out of section 17A

664 New section 17C provides that a covenant in a lease, or other agreement, intending to contract out, or restrict, the requirements in section 17A has no effect.

17D Jurisdiction of county court

New section 17D provides that the county court is the court for determining any question or issue under section 17A.

17E Specific performance of implied building safety term

665 New section 17E explains that where the court orders a party to a lease to comply with the obligations (implied covenants in the lease) under section 17A, the order can apply in relation to parts of the building not let to the leaseholder and notwithstanding any rule that would otherwise restrict a remedy.

17F Interpretation

666 New section 17F explains the meaning of certain terms in sections 17A to 17E.

Background

667 This is a new clause to align the Landlord and Tenant Act 1985 with the new Building Safety Bill. It ensures that there are dedicated provisions in long leases of dwelling in higher-rise buildings dealing with the carrying out of building safety works and the recovery of associated costs.

Clause 89: Building safety charges

Effect

These Explanatory Notes relate to the Building Safety Bill as published in Draft on 20 July 2020 (Bill CP 264)

- 668 This clause inserts new sections (17G to 17X) into the Landlord and Tenant Act 1985 concerning building safety charges payable by tenants under long leases of dwellings in high risk buildings. These establish the concept of a new 'building safety charge' to facilitate transparent recovery of costs incurred by landlords in putting in place building safety measures. The charges which will be separate from the service charge, so that costs incurred on building safety measures will be readily identified and accounted for (17G).
- 669 The new sections place obligations on the landlord in relation to providing budgets and estimates to tenants and making demands for building safety charges. In addition, there is an obligation on the landlord to deduct the value of any funding received (17P).
- 670 They make provision for some costs to be excluded from recovery and for those costs which are recoverable to be subject to certain restrictions. Costs will normally only be recoverable to the extent that they are reasonably incurred (17J), have been subject to a timely demanded (17Q), and have been subject to prior consultation where required (17K-M).
- 671 These sections establish the rights of tenants to receive pertinent information from the landlord and from the Accountable Person. They also establish the rights of tenants (and landlords) to apply to the Tribunal for determination of issues that arise in relation to building safety charges (17T).
- 672 It is the policy intention that as far as possible leaseholders should not have to face unaffordable costs. The Government is currently conducting further work to explore appropriate funding models that would mitigate unaffordable costs, if they were faced by leaseholders, and will update on any further measures before the final Bill is introduced.

Details of the clause

17G Building safety charges

- 673 New section 17G provides the landlord may demand in writing from the leaseholder a charge, called a "building safety charge" in respect of building safety costs. It explains that building safety costs are those incurred by the landlord or other Accountable Person, in respect of building safety measures.
- 674 Subsections (5) and (6) provide that building safety measures will be prescribed by negative regulations. Measures may, for example, include:
- The commission and production of the safety case, resident engagement strategy and mandatory reporting scheme;
 - The appointment of the Building Safety Manager;
 - Building safety works;
 - Monitoring and management of day to day safety in the building, resident engagement and using the mandatory reporting system;
 - The costs of compliance with statutory notices, obligations and requirements (but not the cost of enforcement action); and
 - Fees and other charges payable to the regulator.
- 675 The clause also defines 'relevant landlord' and 'relevant tenant' which applies to the sections 17G to 17W.

17H Building safety charges: landlord obligations

676 New section 17H sets out certain obligations the landlord must comply with when demanding a building safety charge.

677 Subsection (1) provides that a budget has to be prepared for the annual accounting period with the estimate of the building safety costs to be incurred and the charge payable by the leaseholder.

678 Subsection (2) states that the landlord must apportion costs between all of the dwellings in the building, that the landlord must hold the charge received by leaseholders on trust in a separate account, and that the landlord must provide the leaseholder with a reconciliation account within 28 days of the end of the annual accounting period. The reconciliation account must specify:

- The building safety measures carried out and costs incurred during the accounting period;
- The total of building safety charges due from all of the relevant leaseholders in the building;
- The building safety charges payable by and received from the individual leaseholder;
- Any other relevant financial contributions towards the costs received or made by the landlord;
- The amount of any remaining balance in the account, which must be used to defray the charges payable in the next annual accounting period;
- Any enforcement action taken by the regulator under this Act, and the costs incurred by the landlord.

679 Subsection (3) provides that a building safety charge demand cannot be served at intervals of less than three months.

680 Subsection (4) provides that the leaseholder can withhold a payment until any overdue estimate, budget or reconciliation account has been provided.

681 Subsections (6) and (7) provide that regulations may be made by the Secretary of State altering the landlord obligations under subsections (1) - (3).

17I Apportionment of building safety costs

682 New section 17I applies where the landlord is required by subsection 17H (2) (a) to apportion building safety costs. Where a lease sets out a method for apportionment of costs this must be used and if the lease is silent on such terms, then a method agreed in writing between the landlord and leaseholder can be applied. Subsection (4) allows for applications to be made to the Tribunal, where there is disagreement on the apportionment, for determination of a fair apportionment method for the parties. The determination must be complied with by the landlord who must then apportion the building safety costs using that method. Subsection (6) sets out the meaning of terminology referred to in this section.

17J Limitation of building safety charges: reasonableness

683 New section 17J provides that building safety costs are only payable as a building safety charge by the leaseholder to the extent that the costs are reasonably incurred. The landlord will need to be able to demonstrate that services such as maintaining a fire detection system or

works such as the installation of such a system, were warranted. In addition, the works or services have to be of a reasonable standard. If the costs incurred are not reasonable, the charge payable is limited to the amount that would be reasonable.

17K Limitation of building safety charges: consultation requirements

684 New section 17K provides that in relation to “qualifying building safety works” or a “qualifying building safety agreement”, the “relevant contribution” recoverable from a leaseholder as a building safety charge is limited to an “appropriate amount” except in the circumstances set out in subsection (1). Those circumstances are:

- The consultation requirements have been complied with or those requirements have been dispensed with by the First-tier Tribunal;
- The works are urgent; or
- The works are carried out, or the agreement is entered into, whilst the building is in special measures.

685 Subsection (2) describes the concept of a “relevant contribution” – the amount that a leaseholder will be due to contribute in building safety charges towards the cost of qualifying works or a qualifying agreement.

686 Subsection (3) introduces the notion of an “appropriate amount”. Where a leaseholder’s relevant contribution will exceed an appropriate amount, the landlord will usually be required to carry out a formal consultation of the leaseholders before deciding on what contracts to enter into.

687 Under subsection (4) the Secretary of State is given power to make regulations specifying the appropriate amounts. Under sub-sections (6) and (7), if the formal consultation requirements are not complied with, then, unless the Tribunal grants dispensation or the works are urgent or the building is in special measures (as per subsection (1)), the amount the landlord can recover from the leaseholder in respect of the works or the agreement will be limited to the appropriate amount.

17L Consultation requirements: supplementary

688 New section 17L deals with some of the detail in relation to consultation.

689 Subsection (1), the Tribunal can dispense with the consultation requirements in any particular case if it is satisfied that it is reasonable to do so.

690 Subsections (2) – (4) what are “qualifying building safety works”, what is a “qualifying building safety agreement” and what are “the consultation requirements”, will be set out in regulations made by the Secretary of State.

691 Sub-section (5) makes clear that an agreement appointing a Building Safety Manager will not be a qualifying agreement.

17M Consultation requirements: urgent cases

692 New section 17M applies if the qualifying building safety works are required under a compliance notice or an urgent action notice issued by the Building Safety Regulator.

693 In those circumstances, urgent building safety works will be exempted from the consultation requirements if the landlord or the accountable person serves on the leaseholders an exemption notice in the prescribed form, certified by the Accountable Person. The prescribed form will include information such as to the type of work that needs to be carried out and

why the works are urgent. It must be accompanied by a copy of the compliance notice or the urgent action notice. Subsection (5) provides the Secretary of State with power to prescribe the form of the exemption notice.

17N Consultation requirements: special measures

694 New section 17N applies where a Special Measures Manager has been appointed by order of the Tribunal and the qualifying building safety works are to be carried out by that manager or a qualifying building safety agreement is entered into by that manager, in this circumstance the consultation requirements are also automatically dispensed with 17K (1).

17O Limitation of building safety charges: excluded costs

695 New section 17O provides that certain costs cannot be recovered through the building safety charge. These include costs incurred as a result of enforcement action and costs incurred by reason of breach of contract, unlawful act or negligence. It also provides a new power to prescribe certain costs that will be excluded from being building safety costs through negative regulations.

17P Limitation of building safety charges: financial support

696 New section 17P provides that where financial support has been obtained to defray the costs of building safety works to the landlord, superior landlord or Accountable Person, such sums must be deducted from the building safety costs and, therefore, cannot also be recovered as part of the building safety charge.

17Q Limitation of building safety charges: time limit on making demands

697 New section 17Q limits the amount of building safety costs that can be recovered as a building safety charge by excluding any costs incurred more than 18 months before the demand for payment is made. However, this rule does not apply if within 18 months of incurring the building safety costs the leaseholder is notified that the costs have been incurred and that the leaseholder will subsequently be required to make a contribution in respect of those costs.

17R Limitation of building safety charges: costs of proceedings

698 New section 17R provides that in connection with proceedings before a Tribunal or a court under the Building Safety Bill, a leaseholder may make an application for an order that the costs (or part of the costs) incurred by the relevant landlord are not to be treated as building safety costs and cannot, therefore, be recovered through the building safety charge. The Tribunal may only make such an order if it is just and equitable to do so in the circumstances of the case.

17S Notice to accompany demands for building safety charges

699 New section 17S requires that any demand for a building safety charge to be accompanied by a notice summarising the rights and obligations of the leaseholder.

700 Subsection (2) provides the Secretary of State with power to prescribe the form and content of the notice.

701 Subsection (4) sets out that a leaseholder is not required to pay a building safety charge demand unless it is accompanied by the notice and, where a leaseholder chooses to withhold payment in these circumstances, provisions within the lease, relating to non-payment or late payment of charges, do not apply.

17T Liability to pay building safety charges: jurisdiction

702 New section 17T subsections (1) and (2) provide an application can be made to the Tribunal

for determination as to whether a building safety charge is payable and if so by whom; to whom it is payable; how much is payable and when it is payable. Such an application can be made regardless of whether the building safety charge has been paid by the leaseholder.

703 Subsection (3) provides that an application can be made to the tribunal for determination as to whether costs that could be incurred in carrying out building safety measures are recoverable as a building safety charge and if so from whom, to whom, how much is payable etc.

704 But no application may be made under these provisions if the charge has been admitted or agreed by the leaseholder or has been determined by a court as set out in subsection (4). A leaseholder is not to be regarded as having admitted or agreed the charge only because they have paid it as per subsection (5).

17U Building safety charge contributions to be held on trust

705 New section 17U applies to any building safety charges paid by a leaseholder to the relevant landlord. These charges are to be held by the landlord in trust in a fund to be used in connection with the matters for which they were payable. Subsection (5) sets out that the charges are for the building safety works and therefore not owed back to the leaseholder on the termination of a lease. Subsection (6) covers the dissolution of the trust fund and its use by the landlord.

706 Subsection (9) and (10) provides the Secretary of State with regulation making powers to determine the use of any sums which may remain on credit in the fund. These can set out the provisions to deal with different cases and may contain supplementary, incidental, consequential etc provisions as necessary.

17V Building safety charge contributions to be held in designated account

707 New section 17V specifies that amounts held on trust must be held in a designated account with a relevant financial institution. The definition of a relevant financial institution is to be set out in regulations made under this section (subsection (18)). It sets out that an account is designated once the relevant financial institution has been notified that the sums are held on trust and gives the Secretary of State powers to specify the description of a designated account (subsection (2)). These regulations can also restrict the movement of monies between trust funds.

708 Subsection (4) allows a leaseholder, or a recognised tenants' association, with notice, to inspect documentation and obtain copies evidencing that the requirements set out under subsection (1) – (3) are being complied with. This notice may be served by the secretary of the recognised tenants' association, and can be served on the landlord or on a person who collects the building safety charge on the landlord's behalf. The request must be complied with, within 21 days, and that must be done free of charge at the point of request.

709 Subsection (11) allows for any contributing leaseholder to withhold payment of the building safety charge if that person has reasonable grounds for believing that the landlord has not complied with subsection (1). The Secretary of State is given power to make regulations in relation to the withholding of payment.

17W Failure to comply with section 17V

710 New section 17V provides that failure to comply with the requirements in section 17V to hold building safety charge contributions on trust in a designated account is a summary offence in respect of which prosecutions may be brought by the local authority.

17X Interpretation

711 New section 17X explains the meaning of certain terms in referenced sections 17G to 17V
18

712 Existing Section 18 is amended by the insertion of subsection (2A) which provides that, where a cost incurred by the landlord could either fall within the costs associated with the general service charge or be a building safety cost, it is to be treated as a building safety cost only.

Proposed use of power

713 Clause 89 confers powers on the Secretary of State to make provision about the building safety charges. The amendments made by new sections 17G -17W enables regulations to be made in relation to Landlord and Tenant Act 1985 enabling the recovery of costs incurred by the landlord in complying with the statutory obligations under the new regulatory regime.

Background

714 This clause sets out how building safety charges may be incurred in relation to building safety works required to maintain the fire and structural safety of higher-risk residential buildings - as set out in the Independent Review. It adds new sections to the Landlord and Tenant Act 1985 concerning building safety charges payable under long leases of dwellings in high risk buildings.

Chapter 9: Enforcement

Clause 90: Duty on regulator to enforce Part

Effect

715 This clause is self-explanatory.

Clause 91: Compliance notices

Effect

716 Clause 91 enables the Building Safety Regulator to issue a compliance notice to a 'relevant person' (i.e. the Accountable Person or Building Safety Manager) where they are contravening, or appear likely to contravene, a 'relevant requirement' under this Part of the Bill or a requirement set out in regulations made under it. Regulations may set out requirements that are excluded from enforcement action under this clause. The notice will either require that particular, specified steps are taken within a period of time set out in the notice or will require the relevant person to remedy the contravention in question within the period of time set out in the notice.

717 If the contravention is one that places people in or about the building in imminent danger, in the Building Safety Regulator's view, the compliance notice is termed an 'urgent action notice'. The consequences of this are i) that the regulator is likely to set a shorter period to rectify the contravention and ii) any appeal against the notice will not suspend its effect unless the Tribunal determines that it should (see clause 93(3)).

718 If the person issued with a compliance or urgent action notice does not comply by the date specified, or otherwise breaches the notice, the Building Safety Regulator will be able to prosecute for the breach. The offence of breaching a notice will be triable either way, reflecting that not only will a contravention have occurred, but a formal opportunity to rectify it will have been refused. If tried by magistrates, the offence will carry a maximum penalty of an unlimited fine and/or 12 months' imprisonment (six months until the commencement of section 154(1) of the Criminal Justice Act 2003). If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years' imprisonment. Under clause 114, certain

corporate officers could also be liable for prosecution.

719 These notices will be appealable to the First-tier Tribunal (see clause 93 for further detail).

Background

720 This clause introduces a power for the Building Safety Regulator to address non-compliance with the new regime for the safety of higher-risk buildings without having to resort immediately to criminal prosecution.

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

Example 1

The Building Safety Regulator becomes aware that an Accountable Person has not been maintaining the information as required by clause 79 above and regulations made under it. The Regulator issues a compliance notice to the Accountable Person identifying the contravention in question and setting a period of time for the Accountable Person to rectify that contravention.

Clause 92: Compliance notices: supplementary

Effect

722 Clause 92 enables the making of regulations to set out further detail as to how compliance notices will work in practice, including what should be specified in notices; how notices should be given to relevant persons; how notices can be amended or withdrawn; and how arrangements can be made to extend the set period for compliance.

723 This clause also requires the Building Safety Regulator to notify other relevant bodies where it serves a compliance notice, including the local authority, relevant Fire and Rescue Authority, the Regulator of Social Housing (in appropriate cases) and any other body prescribed in regulations.

Clause 93: Appeals against compliance notice

Effect

724 Clause 93 sets out that a person receiving a compliance notice as described above may appeal against that notice to the First-tier Tribunal, and that appeal of a compliance notice that is not an urgent action notice will suspend the effect of the notice pending the resolution of the appeal. However, as set out in the note above in respect of clause 91, given the increased seriousness of the issues justifying the issue of an urgent action notice, the clause sets out that an appeal against such a notice will not suspend its effect unless the First-tier Tribunal determines that it should.

Clause 94: Offence: contravention giving rise to risk of death and serious injury

Effect

725 Clause 94 creates an offence of breaching a 'relevant requirement' under the new regime set out in this Part of the Bill, or regulations made under it, without reasonable excuse, where that failure places those in or about the building at a significant risk of death or serious injury arising from a building safety risk. A 'relevant requirement' is defined as a requirement that is not excluded from enforcement action by secondary legislation. 'Building safety risks' are defined in clause 16.

726 The offence is triable either way, with a maximum penalty on indictment of an unlimited fine and/or two years in prison. If the breach continues after conviction, the court will also be able to impose an ongoing penalty until such time as the breach is remedied; that penalty will be set at a daily rate of a level 1 fine (currently £200).

Background

727 Where a requirement under the new regime is breached, we would normally expect the Building Safety Regulator to use a compliance notice as described in the previous clauses to secure compliance from the Accountable Person or Building Safety Manager – or an urgent action notice, where the contravention places people in or about the building in imminent danger. For the most serious breaches of these requirements, where the failure places those in or about the building at a significant risk of death or serious injury, the Building Safety Regulator will be able to move directly to prosecution for the offence described in this clause, if it considers that to be the most effective and appropriate course of action.

Example 1

On a first inspection of an existing higher-risk building, the Building Safety Regulator finds evidence that, while the building's main exit route is in constant use, the emergency exit at the foot of the stairs is seldom used and, over time, has warped to the point where it has become stuck in the frame and cannot be opened, even by putting a shoulder to it. In addition, the building's office is on the ground floor and has no self-closing device on the door, with numerous ignition sources in the office and deliveries stored there, giving a high risk of fire open to the living accommodation. This means that a fire in the office would affect the means of escape for anyone wanting to evacuate because, due to the stuck emergency exit, they have to pass the office and, for the accommodation on the ground floor, the fire and smoke will be right outside their front doors.

Given the potential seriousness of these risks, the Building Safety Regulator issues the Accountable Person with an urgent action notice (as described in clause 91 above), requiring the issues to be rectified within seven days. In addition, as the Building Safety Regulator has found similar failings in other buildings under the control of the Accountable Person, and given the significant risk of death or serious injury to those living in the building, the Building Safety Regulator decides it would be appropriate to prosecute the Accountable Person for this offence and seek a significant penalty from the courts to punish this non-compliance.

Chapter 10: Special Measures

Clause 95: Notification by regulator before making application under section 96

Effect

728 Clause 95 provides that the Building Safety Regulator has to give formal notice to the Accountable Person that it proposes to trigger the special measures provisions, namely that it will apply to the First-tier Tribunal to appoint a manager in place of the Accountable Person. It gives the power to the Secretary of State to make provisions in regulations about the form and content and the method of issuance of the notice. There is also a power for the Secretary of State to set out in regulations the procedure for how the Accountable Person can respond

and challenge the notice and the way in which the regulator must have regard to such representations. The Building Safety Regulator may not make an application within the first 14 days of the notice being issued to the Accountable Person.

729 The circumstances in which a Special Measures Manager can be appointed and the functions they can be given are set out in clause 96.

Background

730 This is a new provision.

731 Where the Building Safety Regulator proposes to apply to the First-tier Tribunal to intervene on the Accountable Person's management of their building, procedural fairness dictates they should have the opportunity to challenge and provide representations. The clause ensures that the Building Safety Regulator discharges its power to apply for a special measures order in a fair way.

Example 1

The Secretary of State in regulations will set out the process and the procedure for the way in which the Accountable Person will be able to make representations to the Building Safety Regulator. The notification before seeking an order will allow the Accountable Person time to put forward representations as to why a special measures order is not necessary or appropriate and to agree a different course of action with the Building Safety Regulator. The Building Safety Regulator will need to decide whether it accepts these representations or whether to progress to the next stage and submit an application to the First-tier Tribunal for an order appointing a Special Measures Manager.

Clause 96: Order appointing special measures manager

Effect

732 Clause 96 sets out a power for the court to appoint a Special Measures Manager, for an occupied building in scope of the regime, further to an application made by the Building Safety Regulator. The clause sets out the grounds for when the First-tier Tribunal can make an order appointing a Special Measures Manager. It sets out the functions which a First-tier Tribunal can give to the appointed manager i.e. any functions under Part 4 of this Bill or regulations made under it that relate to the management of building safety risks, and any function as a receiver of funds.

733 The First-tier Tribunal only has the power to make an order in respect of occupied higher-risk buildings that don't have a Building Assurance Certificate, if there has been ongoing, or a one-off serious, non-compliance by the Accountable Person with their statutory obligations under Part 4 of this Bill or where the Accountable Person has repeatedly mismanaged building safety charges.

734 Subsections (5) and (6) give the First-tier Tribunal the powers to specify any matters, including incidental/ancillary matters, in the order that may relate to the Special Measures Manager's functions. This includes that the First-tier Tribunal can make modifications to any provisions or regulations as set out in Part 4 of this Bill, as necessary for the order. It can also order that rights and liabilities under third party contracts will fall to the manager, and that the manager may bring claims in relation to those contracts, regardless of whether they accrued before or after the manager's appointment. This subsection also makes provision for

the order to include matters pertaining to remuneration of the manager and the persons who shall be deemed responsible for making that payment. Subsection (7) gives the Secretary of State power to amend, by affirmative regulations, the grounds upon which a First-tier Tribunal must be satisfied before appointing a Special Measures Manager.

735 Subsection (8) set out that the definition of “building safety charge” is the same as defined in clause 89 (section 17G of the Landlord and Tenant Act 1985) of this Bill.

Background

736 This is a new provision.

737 The Independent Review recommended that there needs to be a regulator in relation to fire and structural safety in occupation who can hold dutyholders to account with robust sanctions where necessary.

738 Ministers wished to go further and introduce a Special Measures Manager who would take on the management of risks in a building as a last resort, where the Building Safety Regulator considers that poor management of the building places residents’ lives at risk relating to the building safety risks.

Example 1

Where an Accountable Person has failed or continues to fail to meet the statutory obligations under the new regime, as set out in this Part 4 of this Bill, after using the compliance and enforcement tools at its disposal, the Building Safety Regulator may be of the opinion that for the safety of the residents, the building should be managed by a Special Measures Manager. The Building Safety Regulator may apply to the First-tier Tribunal and once the grounds for appointment have been met an order to put the Special Measures Manager in place may be issued. The Special Measures Manager would manage the building and ensure compliance with statutory obligations under Part 4 as directed in the First-tier Tribunal’s order. This a last resort regulatory tool and would most likely be implemented for a short, specified period such as in circumstances of insolvency of the Accountable Person, until a purchaser or replacement Accountable Person is found for the building.

Clause 97: Orders under section 96: Supplementary

Effect

739 Clause 97 further explains orders to appoint Special Measures Managers under clause 96.

740 It requires that the Special Measures Manager must display a copy of the order appointing them in a prominent place in the building, as soon as reasonably practicable after being appointed. It automatically brings to an end the appointment of the building’s Building Safety Manager (if that appointment has not already ended) and it provides that the functions given to Accountable Persons by Part 4 of the Bill and by regulations made under it will no longer apply to that building’s Accountable Person for the period that the special measures order is in place.

741 The clause also allows for the Special Measures Manager or the Building Safety Regulator to apply to the First-tier Tribunal to include directions in the order in relation to the carrying out of the functions or other matters by the manager. It can include directions to third parties, such as managing agents, to facilitate the execution of the functions.

742 The clause also provides the power for the Secretary of State to make regulations about how Special Measures Managers should receive and account for money received in the course of their functions.

743 Orders made under clause 96 cancel any unexpired compliance notices issued in respect of the building once in effect. The Accountable Person, however, remains liable for breaches of any compliance notices contravened before this time.

Proposed use of power

744 This power sets out what happens to the Accountable Person and Building Safety Manager for a building where a Special Measures Manager is appointed.

745 This power will also ensure applications to the court for a special measures order are set out in a clear and uniform manner of an appropriate standard – by amending the requirements as necessary, ensuring they remain relevant, and it allows regulations to be made setting out requirements for how Special Measures Managers should deal with and account for monies received.

Background

746 This clause supplements clause 96 as described in the note above.

Clause 98: Amendment of other orders on making of order under section 96

Effect

747 This section gives a power to a First-tier Tribunal to amend an existing order to appoint a manager for a building made under the Landlord and Tenant Act 1987, section 24. In some buildings, where a Special Measures Manager is appointed a section 24 order may already be in place after an application by leaseholders, appointing a manager. The First-tier Tribunal may amend the section 24 order to ensure that a manager appointed under section 24 ceases to hold functions that are given to the Special Measures Manager (appointed under clause 96) in the same occupied building.

Proposed use of power

748 This power will ensure there is no overlap in functions of the two managers in situations where two separate managers have been appointed under both this Bill and the Landlord and Tenant Act 1987, section 24.

Background

749 Under section 24 of the Landlord and Tenant Act 1987, Leaseholders may have the right to apply to the First-tier Tribunal for a new manager to be appointed to manage the provision of services and works at their building or development. Clause 96 of this Bill also allows for the Building Safety Regulator to make an application to the First-tier Tribunal for a Special Measures Manager to be put in place within a building under some circumstances.

750 This clause will ensure that the First-tier Tribunal approving a Special Measures Manager can amend an order made under section 24 of the Landlord and Tenant Act 1987 so that there is no overlap in the functions of the managers where they are appointed under different sets of legislation.

Example 1

A circumstance may arise where an Accountable Person has repeatedly failed to fulfil their duties under Part 4 of this Bill in relation to an occupied higher-risk

building. The Building Safety Regulator can apply to the First-tier Tribunal to request that a Special Measures Manager be put in place in the building to ensure that the required functions are carried out. However, it may transpire that an existing manager was appointed through a section 24 order. In this circumstance, the First-tier Tribunal can amend the section 24 order to exclude functions from that role that are to be assigned to the Special Measures Manager.

Clause 99: Notifications about orders under section 96

Effect

751 When an order under clause 96 is made (to appoint a Special Measures Manager) the Building Safety Regulator is required to serve a notice on those prescribed persons who are listed in regulations made under this clause. A notice must also be served where the order is varied or revoked. The persons who will be prescribed in regulations are likely to include the Accountable Person and the Building Safety Manager (if there is one), as well as other interested bodies such as the local housing authority, Fire and Rescue Service and residents of the building. This clause also gives the Secretary of State the power to set out in regulations the form and contents of the notices, any information they must contain as well as their delivery.

Background

752 This is a new provision to ensure the Accountable Person (and other relevant persons) is aware of action taken by the Building Safety Regulator and the court's decision. It is similar to the requirements in the Housing Act 2004, Schedule 5, where the local housing authority proposes to revoke a House in Multiple Occupation licence.

Example 1

If the Building Safety Regulator did not receive a response to its notice of intention and then obtained an order from the court, it would then serve the notice on persons listed in regulations, which it is intended will include the Accountable Person and other interested bodies. It is intended that regulations making provisions about notices will require that they set out details of the court order including the date it comes into force, the reasons why it has been served, and details of the special measures regime and manager.

Clause 100: Variation or revocation of orders under section 96

Effect

753 Clause 100 gives a power to a First-tier Tribunal to vary or revoke an order to impose a Special Measures Manager made under section clause 96 in relation to an occupied building, should such a First-tier Tribunal receive a request from the Accountable Person or Building Safety Manager of that building to do so. The clause also gives a power to the Secretary of State to make regulations which can specify under what conditions a First-tier Tribunal may vary or revoke a clause 96 order using this clause. When varying or discharging the order, the First-tier Tribunal also has the power to instruct a person with respect to matters relating to the variation or discharge of the order.

Proposed use of power

754 This clause gives a power to the Secretary of State to make provision in regulations about the grounds on which a First-tier Tribunal may vary or revoke an order. The grounds will be laid out in secondary legislation.

Background

755 This is a new provision which allows a First-tier Tribunal to revoke an order made under clause 96.

Example 1

An Accountable Person may apply to the First-tier Tribunal to revoke a special measures order placed upon their buildings. The First-tier Tribunal may decide to revoke the order if the grounds for revocation are met. These grounds might be:

- The reasons for cancelling the certificate have been addressed or will be addressed if the certificate is reinstated;
- The Building Safety Regulator has confidence that those problems will not be repeated;
- Any monies owed to the Building Safety Regulator or the Special Measures Manager by the Accountable Person or a former Building Safety Manager have been paid; and
- The Accountable Person has not obstructed or hindered the operation of the special measures scheme.

Chapter 11: Miscellaneous and general

Clause 101: Guidance

Effect

756 Clause 101 sets out the areas of the building safety regime where the Building Safety Regulator may issue guidance with statutory force, including the process to be followed in relation to the guidance and the potential consequences of complying – or not complying – with the content of that guidance.

757 Subsection (1) sets out the areas where the Building Safety Regulator may issue guidance; they are:

- How to assess the competence of a prospective Building Safety Manager;
- Mandatory reporting requirements for Accountable Persons and Building Safety Managers;
- Duties to keep or give information to residents and others; and
- How an Accountable Person should operate a complaints procedure for residents.

758 Subsection (6) makes clear that the references to specific provisions of the Bill includes regulations issued under those provisions.

759 Subsections (1), (2) and (5) set out that the regulator may issue, withdraw or amend guidance, but only with the consent of the Secretary of State. Subsection (3) makes clear that, as with the approved documents issued in accordance with Part I of the Building Act 1984, compliance with the guidance can be relied on in court or First-tier Tribunal proceedings as tending to establish compliance with the provision to which the guidance relates, while not following the guidance will tend to establish non-compliance with the relevant provision. Finally, subsection (4) provides that any document seeming to be such guidance will be taken to be such unless the contrary is proved.

Background

760 Historically, there has always been detailed guidance (the Approved Documents) to give further detail in respect of the functional requirements set out in the Building Act 1984. This clause sets out those areas of this Bill where similar guidance, with statutory force, is needed to give guidance to those with duties under the new building safety regime.

Example 1

In order to assist Accountable Persons with setting up and operating a complaints procedure for the residents of its higher-risk building(s), the Building Safety Regulator will have the power to set out in guidance with statutory force the key features of such a scheme. Even if the Accountable Person does not have particular experience in operating such a scheme, if it sticks to the requirements set out in the regulator's guidance, they will have comfort that, because of subsection (3), they will be able to rely in court or First-tier Tribunal proceedings on compliance with the guidance as tending to establish compliance with the legal requirements.

Clause 102: Cooperation and coordination

Effect

761 Clause 102 requires the Accountable Person for a higher-risk building to assist a Responsible Person who, within the same building, also has responsibilities for the fire safety of the occupants and people who might be affected by a fire.

762 Responsible Person(s) are defined under Article 3 of the Regulatory Reform (Fire Safety) Order 2005.

763 The clause also amends Article 22 of Regulatory Reform (Fire Safety) Order 2005 to provide a reciprocal duty on the Responsible Person to assist each Accountable Person carrying out their duties in respect of the same higher-risk building.

Background

764 This is a new provision.

Example 1

Higher-risk buildings are often mixed use, owned and managed by more than one entity, and include commercial areas that are not for residential use, such as shops, gyms, restaurants etc. There are many different ownership models, many of them complex with different bodies responsible for managing the same or similar risks within different part of the building or its structure, such as roofs or individual

floors.

To support the “whole building” approach set out by in the Independent Review, this clause requires Accountable Persons and Responsible Persons under the Fire Safety Order to work together to share relevant fire safety information.

For example, the Accountable Person and Responsible Person should proactively share the results of their risk assessments, including providing an overview of the risks and safety measures that are in place to control the identified risks. The Accountable Person should factor these results into their own decision making and ensure that the safety arrangements they have are suitable for controlling any additional risks that may arise from a part of the building which is out of their direct responsibility. Furthermore, both the Accountable Person and Responsible Person are dutybound to ensure that their safety arrangements do not have the effect of rendering the others’ arrangements ineffective.

Clause 103: Appeals against decisions of the regulator

Effect

765 Clause 103 related to Part 4 only, and sets out that prescribed persons have the right to appeal prescribed Part 4 decisions of the Regulator. These appeals can only be made on the grounds prescribed.

766 The clause also allows regulations to make provision about the effect of an appeal on a regulatory decision, for example, they may provide that bringing an appeal suspends, or does not suspend, the effect of a regulatory decision (see clause 93 for comparison). In addition, regulations may make provision about the powers of the tribunal when dealing with an appeal, including power to give directions.

Background

767 This section is intended to be used to provide a comprehensive right to appeal for most of the decisions the Regulator will be able to make for higher-risk buildings under this new legislation.

Example 1

The Building Safety Regulator has decided to cancel a Building Assurance Certificate for a higher-risk building due to non-compliance. This is appealed by the Accountable Person to the First-tier Tribunal. The regulations might provide that the Certificate is not cancelled while the appeal is ongoing, until it is finally decided.

Clause 104: Managers appointed under Part 2 of the Landlord and Tenant Act 1987

Effect

768 Clause 104 makes amendments to section 24 of the Landlord and Tenant Act and ensures that where the Accountable Person has a Building Safety Manager in place, a manager appointed by the court for that building should not have conflicting fire and structural safety duties. It ensures that tenants are unable to appoint their own Building Safety Manager without the Building Safety Regulator’s knowledge or approval.

Background

769 This is a new provision in line with the Independent Review, which stated that “The dutyholder must nominate a ‘Building Safety Manager’ with the relevant skills, knowledge and expertise to assist in discharging their duties and to be available to residents concerned about safety in their building”. Section 24 of the Landlord and Tenant Act 1987 currently allows for the tenants to apply to the court to appoint a building manager. If that right were to apply within this regime, it could compromise the implementation of the building safety measures.

Example 1

If the residents of a building are unhappy with their Building Safety Manager, they will be unable to circumvent the regulator by going to the Tribunal to obtain the appointment of their chosen building manager, whose responsibilities would then overlap with those of the appointed Building Safety Manager. In the event that there are lapses associated with the Building Safety Manager, it is the regulator who would direct the Accountable Person to take action, to remove a Building Safety Manager who is not fulfilling their functions.

Clause 105: Interpretation of Part 4

Effect

770 Clause 105 provides key definitions used in Part 4 of the Bill.

Part 5: Supplementary and general

Chapter 1: New homes ombudsman scheme

Clause 106: The new homes ombudsman scheme

Effect

771 Clause 106 requires the Secretary of State to arrange for there to be a redress scheme available for people who are ‘relevant owners’ of new build homes. The scheme selected must meet the conditions at subsection (2), including the requirements set out in Schedule 7.

772 The purpose of such a scheme is to enable relevant owners to make complaints against scheme members (developers) and to have such complaints investigated and determined by an independent ombudsman.

773 The Secretary of State can arrange with a person to establish the scheme and implement it or the Secretary of State could establish the scheme itself and implement the scheme directly (or appoint a person to undertake the implementation of it). This will provide flexibility for how the scheme is established and maintained, and who will be the new homes ombudsman.

774 The clause allows the Secretary of State to provide financial assistance to the new homes ombudsman scheme, including through non-repayable forms (grants) as well as repayable forms of assistance (such as loans and guarantees). In the alternative, if the scheme is procured and is not self-financing there is also provision to allow the Secretary of State to pay for the service. However, the intention is for the new homes ombudsman scheme to cover its own costs and to finance itself through fees charged to developers.

775 As stated above, the scheme must manage complaints made by relevant owners of new build

homes. The definition of 'relevant owner' covers individuals rather than businesses. Such individuals must own the relevant interest in land. The individual bringing the complaint must occupy the home as a private residence but may let the property to another person for that person to occupy the home.

776 The clause doesn't restrict the new homes ombudsman scheme to receiving complaints from 'relevant owners' only. It may include provision for other people or organisations, however, it will be up to the new homes ombudsman scheme to set out who can complain to it in these circumstances.

Background

777 This is a new provision. There is no previous provision for owners of new build homes to complain to an ombudsman or redress scheme. Residents living in the private rented sector and social housing already have provision to seek redress set out in legislation.

Example 1

An individual who owns a new build home will be able to bring a complaint against developers who are members of the new homes ombudsman scheme about the developer's conduct and standards of work. The complaint can be raised about matters occurring within two years from the date the home was purchased from the developer. There is flexibility for the new homes ombudsman to include provision in its rules so that it can receive complaints where the purchaser wasn't an individual (for example, small organisations who purchase a new build home from a developer and do not have the capacity to pursue cases through the courts). Complaints can be made for new build homes developed or converted after the clause comes into effect

Clause 107: Meaning of developer

Effect

778 Clause 107 defines who is a developer, establishing who must become a member of the new homes ombudsman scheme.

779 The clause also allows the Secretary of State to set out, in regulations, an additional description of persons (for example by reference to their connection with a "developer" as defined in the first part of the clause), so that anyone of such a description is also a 'developer' for the purpose of the legislation.

Proposed use of this power

780 If, based upon experience in administering the scheme, it transpires that alternative company structures are utilised so that the definition of a developer is inadequate and is not able to capture all those required to be a developer for the purposes of membership of the new homes ombudsman, regulations can provide additional provisions to supplement the definition under this clause, for example by adding related companies as a developer.

Background

781 This is a new provision.

Example 1: Review the definition of a developer

The Secretary of State may review the definition of a developer after a certain period

of time and decide that another category of persons should be included in it (for example where a new development or sales structure existed). This provides flexibility to ensure those who are intended to be members of the new homes ombudsman should be. If the Minister chooses to make regulations, a draft of the regulations will be subject to approval from by each House of Parliament.

Clause 108: Power to require persons to join scheme

Effect

782 Clause 108 creates a power for the Secretary of State to make regulations which will require developers of new build homes within scope, to join the scheme and remain members of the scheme for a specified period. The Secretary of State may also in regulations set out the framework for enforcement including: enforcement body, types of sanctions for failing to comply, and the right to appeal the sanctions, and may include the imposition of a criminal offence where one of the forms of sanction (prohibition order) is breached. The clause also covers publicity by enabling the Secretary of State to make regulations which will require developers of new build homes to obtain a certificate to prove or advertise their membership.

Proposed use of power

783 We intend that when a new homes ombudsman scheme is available, affirmative regulations will be laid which, once approved by both houses of Parliament, will require developers to belong to the new homes ombudsman, and publicise their membership of the same. We also intend that the regulations will set out the enforcement of the provisions.

Background

784 This is a new provision.

785 There is presently no statutory obligation upon developers of new build homes to belong to a redress scheme or way to enforce the requirements. This represents a significant gap for purchasers of new build homes.

Example 1

Once the regulations have been approved, developers of new build homes will be required to belong to the new homes ombudsman scheme. Developers may have to remain members of the scheme until such a time that they are no longer bound by schemes terms. The Government may want developers to be able to confirm or prove their membership (for example, by displaying a copy of their membership in their sales offices).

The clause provides for regulations to be laid regarding the enforcement of any duties introduced by this clause. Where a developer receives a sanction, this could be a fine or prohibition order (for example, a prohibition against marketing or developing new homes), but the regulations must allow for a right of appeal against such sanctions, for example to a court or First-tier Tribunal. If a person breaches a prohibition order, the regulations may include a new criminal offence with a maximum level of penalty to be defined.

In addition, the clause allows the Secretary of State to designate the body or organisation to impose the sanctions or investigate suspected breaches of

requirements. This could be a new or existing body to undertake the enforcement role, and the clause allows the Secretary of State to make payments for that body to undertake the role. The power is flexible to take into account both the existing or new regulatory environment, and territorial extent.

When the Secretary of State chooses to make regulations, a draft of the regulations would be subject to approval by each House of Parliament.

Clause 109: Developers' code of practice

Effect

786 Clause 109 allows the Secretary of State to give approval to a code of practice that covers the conduct and workmanship of members of the new homes ombudsman scheme. Alternatively, if the industry or others do not come forwards with its own code, or it is not one which can be approved (for example, as it does not cover the whole of the UK), the clause allows the Secretary of State to issue a code.

787 If a code is issued or approved it must be published by the Secretary of State. If the code of practice needs adjustment or replacement in the future, there is provision to allow this to happen. The Secretary of State can revise or replace it, or approve its revision/replacement, and again such revised or replaced code must be published. In accordance with the Schedule, where there is a code of practice which has been issued or approved then the scheme may accept complaints about non-compliance with such a code. In considering a complaint under the scheme, however, whatever the issue, the scheme must have regard to any code of practice that has been issued or approved.

Proposed use of power

788 The Secretary of State is not required by this clause to issue or approve any code of practice. The ability of the Secretary of State to issue or replace a code of practice is included as a potential option only.

789 It is anticipated that an independent board incorporating the housebuilding industry, consumer groups and others will produce a code of practice governing the standards which owners can expect from a developer, in terms of service and quality/workmanship. A draft code of practice has been seen in draft form.

Background

790 This is a new provision.

Example 1

A code of practice may be used by developers (members of the new homes ombudsman scheme) and the public who buy the homes so that they are all aware of the standards that are expected. These standards could be in relation to the sales, marketing, and after-sales services expected of the developer of the new build home, and on the standards of workmanship/quality. It is expected that if a code of practice is issued or approved by the Secretary of State the new homes ombudsman will require its members to follow it and will consider compliance with the code when investigating complaints.

The intent behind this provision is to create a level playing field for owners and

developers alike and to allow the new homes ombudsman to investigate and determine complaints between purchasers of new build homes and developers in a consistent manner.

In the future once the new homes ombudsman scheme is set up, it may be necessary to adjust the scheme and amend a code of practice. The Secretary of State may then approve, revise or replace a code of practice to reflect circumstances at the time.

To enable purchasers and developers to be aware of the code of practice and expected standards. The Secretary of State will ensure it is publicised and could publish it on the Government's website or signpost to where the code of practice is published.

Chapter 2: Construction products

Clause 110: Construction products

Effect

791 The current regulatory framework covering some construction products placed on the UK market, is derived from the EU Construction Products Regulation 2011. This regime was brought into UK law, as retained EU Law ("the Exit CPR"), via the European Union (Withdrawal) Act 2018 and amended for the UK by the Construction Products (Amendment etc.) (EU Exit) Regulations 2019.

792 Currently this framework only applies to products with an EU harmonised standard or 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. 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. However, there are many construction products where there is no existing EU harmonised standard, or European Technical Assessment, and they are not used by consumers – Aluminium composite material (ACM) cladding being one example and fire doors another. This gap in regulation became apparent after the Grenfell fire

793 We want to make sure that all construction products made available on the UK market fall under a regulatory regime. The Building Safety Bill will do this in two ways, by taking powers to:

- Create a statutory list of 'safety critical' construction products; and
- Require construction products that are not covered by the existing regime or included on the statutory list to be safe products

794 The Bill will also ensure that the Secretary of State has powers to amend the legislation relating to designated products and United Kingdom Technical Assessments, so we can ensure it remains fit for purpose.

795 This section gives the Secretary of State the power to regulate construction products.

796 The power applies to the whole of the United Kingdom.

Proposed use of this power

797 The details of such regulation is set out in Schedule 8 to the Bill

798 This power will be used to create regulations by the Secretary of State for the marketing and supply of construction products in the United Kingdom. This will be achieved in three ways: (a) for designated products (products which perform to a designated standard), (b) to create a list of safety critical products (where the failure of such products would result in death or serious injury) and (c) for all construction products on the market not otherwise designated, subject to a United Kingdom Technical Assessment, or on the list of safety critical products are subject to a general safety requirement.

Background

799 The purpose of this power is to provide that all construction products placed on the UK market are safe and, in the case of products subject to designated standards, United Kingdom Technical Assessments or are on the safety critical list, that they will perform to certain technical standards. For these products, where they are placed on the UK market, this will ensure reliable information is available to anybody who wishes to buy or use these products.

Example 1

The commentary on Schedule 8 sets out the detail of how this power is intended to be used and provides examples of how it would work in practice.

Chapter 3: Architects

Clause 111: Architects: discipline and continuing professional development

Discipline

Effect

800 Clause 111 allows the disciplinary orders made against architects by the Professional Conduct Committee (PCC) of the Architect Registration Board (the Board) to be listed alongside an architect's entry in the Register of architects. This is to provide greater transparency to members of the public procuring architectural services as the Register entry, accessible through the Board's website, will show whether an architect has been disciplined recently. The Board will determine rules for the length of time that a disciplinary order will be listed on the Register, depending on the severity of the order.

Background

801 This is a new provision to increase transparency for those procuring architectural services, in line with wider reform for greater assurance of competence of built environment professionals.

802 Disciplinary orders are published on the Board's website under "Previous PCC decisions", with separate lists for 'current' and 'spent' orders. These lists show all cases heard by the PCC since 1997 and include the date, architect, nature of offence and penalty imposed. This website is not easy to navigate and does not display the information to the public in a transparent way.

Example 1

An architect is found guilty of unacceptable professional conduct by the PCC and is reprimanded but able to continue practicing. When a member of the public searches for this architect on the Register, there will be a note on the architect's entry stating that they have been reprimanded. This will be listed for a period of time determined by the Board depending on the severity of the order. Once this time period has

lapsed, the note on the architect's Register entry will be removed.

If an architect is issued with an erasure order then their name is removed from the Register. They may reapply for re-entry no less than two years from the date of erasure (or longer if so specified by the PCC). The Board will decide as part of the prescribed Rules whether the original disciplinary order will be marked on the Register if the sanctioned individual should obtain restored registration.

Continuing professional development

Effect

803 Clause 111 (3)(a) and (3)(b) allow the Architects Registration Board (the Board), the statutory regulator of architects in the UK, to monitor the competence of architects throughout their Registration. This power will allow the Board to determine which practical experience or training should be assessed and how the assessment should take place. The Board must consult professional bodies and other stakeholders before introducing a competence regime.

804 If an architect does not meet the requirements set out by the Board, or the Board is not satisfied that the person has met the requirements to a sufficient standard, the individual may be removed from the Register.

805 Clause 111(3)(c) allows the Board to determine a period of extension for an individual architect to complete their recent training. The clause also sets out the conditions for when the Board can remove an architect from the Register, including if the individual has not requested an extension or if the Board remains unsatisfied with the standard of competence demonstrated.

Background

806 Sections 4(1) and 4(2) of the Architects Act 1997 provide broad powers for the Board to determine the criteria and process for registering as an architect in the UK. However, the Architects Act does not provide powers for the Board to scrutinise competence after the initial registration and throughout an architect's career unless an allegation of unacceptable professional conduct is brought before the Board. This means that an architect may be practicing for a prolonged period without any further proactive regulatory oversight.

807 This provision will apply to all architects on the Register, not only those working on higher-risk buildings, due to the public safety aspect of all construction. Most other regulated professions require their registrants to demonstrate competence throughout their career and most professional membership bodies have mandatory Continuous Professional Development requirements. This proposal brings the architects profession in line with best practice and gives greater assurance to those procuring and inhabiting buildings.

Example 1

The exact requirements for the assessment of practical experience or training will be determined by the Board following a full review and consultation. This review was commenced in March 2020.

Clause 112: Power of Architects Registration Board to charge fees

Effect

808 Clause 112 allows the Secretary of State by regulations (subject to the negative procedure) to make provision for the services for which the Board may charge a fee. Regulations will set out the services, or types of services, in respect of which the Board may charge a fee. Regulations will also make provisions about the persons who are liable to pay a fee, and how fees charged by the Board are to be calculated and how they are to be paid.

Background

809 Currently, the Architects Act 1997 prescribes a small amount of services for which the Board may charge. The costs of all of the Board's functions are currently met by the annual fee for retention on the Register of Architects under section 8 of the 1997 Act, which is charged by the Board to all architects. After the EU Exit Transition Period, there will be an expansion in the services the Board provides to implement Mutual Recognition Agreements or Memoranda of Understanding relating to the regulation of architects. This clause will allow the Secretary of State to lay regulations to make additional provision for separate fees for additional chargeable services, in order to keep the retention fee down for the architects that do not utilise additional services. This will be after a full impact assessment and consultation.

Example 1

This will be determined in secondary legislation, however the services that will be considered for charging fees are the Board's role in considering and recognising international qualifications, and the Board's function in providing evidence for UK architects registering abroad.

Chapter 4: Miscellaneous and general

Clause 113: Housing complaints made to a housing ombudsman

Effect

810 Clause 113 will enable social housing complainants to escalate a complaint to the Housing Ombudsman service directly, by removing the existing requirement ('the democratic filter') to make their complaint via a 'designated person'. A 'designated person' may be an MP, Councillor or recognised tenant panel.

811 The new paragraph inserted into the Housing Act 1996 (1A) retains the existing procedures. This being that a resident who wishes to escalate a complaint to the Housing Ombudsman Service first needs to have completed their landlord's own complaints process.

812 Removing the democratic filter seeks to improve and expedite access to the Housing Ombudsman Service (HOS) for social housing complainants, who have exhausted their landlord's internal complaints procedure and still have unresolved complaints. The objective is to promote equity of provision for those seeking redress in the social housing sector with those in other tenures which are not subject to a democratic filter process.

813 This should speed up redress for social housing complainants as well as creating equity of provision.

Background

814 This provision applies to England only.

815 The requirement to refer a complaint through a designated person/tenant panel, introduced in the Localism Act 2011, was intended to strengthen the accountability of landlords, enable housing complaints to be resolved using local knowledge and help to reduce the number of

formal investigations by the Housing Ombudsman Service.

816 Through amendments made by The Localism Act 2011 (section 180), a role was given to 'designated persons' in dealing with disputes between members of the Housing Ombudsman Scheme and their tenants/leaseholders. This was in circumstances where complaints had not been resolved in the landlord's procedures and before they could be referred to the Housing Ombudsman. It meant that a complaint against a social landlord cannot be 'duly made' (formally submitted for investigation) to the Housing Ombudsman unless it is made in writing to the Ombudsman by a designated person by way of referral of a complaint made to the designated person.

817 A designated person can be an MP, a Councillor or a recognised tenant panel. If, after a landlord's internal complaints process has been exhausted, and the complaint is still not resolved, a complainant (whose landlord is a member of the Housing Ombudsman Scheme), has to refer any outstanding complaints to such a designated person, before a complaint can be formally referred to the Housing Ombudsman Service. Alternatively, a complainant must wait eight weeks after their complaint has exhausted the landlord's complaints process before they can formally refer their complaint to the Housing Ombudsman Service.

818 This is known as the democratic filter. It has been criticised for undermining consumer empowerment and is counter to the principles of the ombudsman institution. The Housing Ombudsman's own consultation also uncovered concerns and found that while some local 'designated person' arrangements work well, in many cases they do not and that there were designated persons who did not fully understand their role.⁷

819 It also emerged that in some areas tenant panels either do not exist or are not used. Removing the democratic filter was supported by the majority of respondents when the Housing Ombudsman Service consulted on its Corporate Plan 2019-22 and Business Plan 2019-20, with low support being expressed for the designated person role.

Example 1: New complaints process

Current process

1. A resident makes a complaint to their landlord and completes the landlords complaints/dispute process.
2. The resident remains dissatisfied and decides to escalate the complaint to redress level and to the Housing Ombudsman Service. They contact a designated person for assistance (the Democratic Filter). If the designated person is unable to help, after 8 weeks from the landlord's decision they then refer the complaint to the Housing Ombudsman Service.

Following removal of the democratic filter

1. Again, a resident makes a complaint to their landlord and competes the landlords complaints/dispute process.
2. The resident remains dissatisfied and decides to escalate to redress level and contacts the Housing Ombudsman Service directly asking them to investigate their complaint.

⁷ <https://www.housing-ombudsman.org.uk/about-us/corporate-information/publications/our-consultations>

Clause 114: Liability of officers of body corporate etc

Effect

820 Clause 114 provides that, where a corporate body commits a criminal offence under Parts 2 or 4 of this Bill, any director, manager, secretary or other similar officer of that body is also deemed to have committed that offence in certain circumstances. Those circumstances are where the individual has consented to or connived in the commission of the offence or where the offence is attributable to any neglect on their part. Clause 43 makes similar provision in respect of the criminal offences in the Building Act 1984.

Background

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

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

823 Where there is sufficient evidence and the public interest test is met, prosecutions could be brought against directors/managers as well as prosecuting the company for an offence under the relevant statutory provisions, even where there is a sole director. This would not be regarded as prosecuting the same person twice, as the two are separate legal entities. Should both matters result in a conviction, it will be for the sentencing court to sentence the individual(s) and the corporate body appropriately.

824 Clause 114 has been modelled on section 37 of the Health and Safety at Work Act 1974.

Example 1

If an Accountable Person allows a higher-risk building for which they are responsible to be occupied before an application to register the building was made to the Building Safety Regulator, that would be an offence under Clause 62. If the Accountable Person was a corporate body and there was evidence that a particular director or manager had made the decision to allow the building to be occupied, that director or manager could be prosecuted as well as or instead of the corporate body.

Clause 115: Power to make consequential provision

Effect

825 Clause 115 confers on the Secretary of State a regulation-making power to make further consequential amendments which arise from this Bill or regulations made under it. Regulations that make consequential provision may amend, repeal or revoke an enactment. Any regulations that amend or repeal primary legislation are subject to the affirmative procedure. Any other regulations under this clause are subject to the negative procedure.

Clause 116: Regulations

Effect

826 Clause 116 ensures that regulations made under the new Building Safety Act 2020 can include any consequential amendments as well as transitional provisions and cover any other incidental matters.

827 This clause also provides that regulations made under this Bill are to be made by statutory instrument and sets out which sets of regulations require the affirmative procedure.

Clause 117: Extent

Effect

828 Clause 118 details the territorial extent of the provisions in the Bill. See Annex A for additional detail.

Clause 118: Commencement and transitional provision

Effect

829 Clause 119 is self-explanatory.

Clause 119: Short title

Effect

830 Clause 120 is self-explanatory.

Schedule 1: Amendments of the Health and Safety at Work etc Act 1974

Effect

831 This Schedule makes a number of amendments to the Health and Safety at Work etc Act 1974 to support the formation of the new Building Safety Regulator within the Health and Safety Executive.

832 Paragraph 2 amends section 11(5) of the Health and Safety at Work etc Act 1974 to exclude the Health and Safety Executive's new Building Safety Regulator "building functions" from the existing requirements for the Health and Safety Executive to agree how it undertakes its activities with the Secretary of State. This change reflects the new requirement under clause 23 and clause 24 for the Building Safety Regulator to produce a strategic plan exclusively in connection with its building functions.

833 Paragraph 3 inserts a new section 11A into the Health and Safety at Work etc Act 1974. Subsection 11A(1) is intended to give the Health and Safety Executive the power to determine how it delivers its building functions. New subsection 11A(2) illustrates the types of activity the Health and Safety Executive could undertake using this power, such as encouraging compliance with the new regime, undertaking research or providing training. New subsection 11A(3) enables the Health and Safety Executive to set up committees relating the building functions, and pay committee members for their work.

834 Paragraph 4 amends section 12(3) of the Health and Safety at Work etc Act 1974, relating to the Secretary of State's power to direct the Health and Safety Executive. Section 12(3) provides a safeguard around the use of the power to direct by precluding the Secretary of State from issuing any directions relating to enforcement in a particular case. The amendment ensures this safeguard also applies in relation to the Health and Safety Executive's new building functions.

835 Paragraph 5(2) makes a minor consequential amendment. Paragraph 5(3) excludes the building functions from provisions in relation to committees of the Health and Safety Executive in section 13(7) of the Health and Safety at Work etc Act 1974; this reflects that new section 11A(3) of the Health and Safety at Work etc Act 1974 makes specific provision for committees to be set up to support the building functions.

836 Paragraph 6 amends section 27 of the Health and Safety at Work etc Act 1974. The effect is to exclude the Health and Safety Executive's new Building Safety Regulator functions from provisions enabling the Health and Safety Executive to serve notices for the purpose of obtaining information pertinent to the discharge of its functions. Paragraph 4 of Schedule 2 of this Bill provides authorised officers of the Building Safety Regulator with specific powers by which they may obtain information relevant to the Building Safety Regulator's building functions. Therefore, it is not necessary for section 27 to apply in respect of the Health and Safety Executive's building functions.

837 Paragraph 7, which amends section 53, makes clear the meaning of 'building functions', and 'building enactments' in the Health and Safety at Work etc Act 1974.

838 Paragraph 8(a) amends paragraph 2(3)(d)(iii) of Schedule 2 to the Health and Safety at Work etc Act 1974. This paragraph sets out the arrangements for the Secretary of State to make appointments to the Health and Safety Executive (commonly referred to as the Health and Safety Executive Board), including requirements for certain members to be appointed after consultation with organisations representing employers, employees and local authorities. Paragraph 2(3)(d)(iii) (before amendment) enables the Secretary to appoint four "other members" of the Health and Safety Executive Board after consultation with the Scottish Ministers, the Welsh Ministers, or such organisations as the Secretary of State considers appropriate. The amendment will ensure that the Secretary of State can use the power under 2(3)(d)(iii) to appoint members of the Health and Safety Executive Board after consulting with organisations whose activities relate to building safety, building standards or fire safety. This amendment is intended to ensure that Health and Safety Executive Board members can be appointed because of their building safety, building standards or fire safety expertise, so that the Health and Safety Executive Board has the experience and skills necessary to effectively oversee the new building functions.

839 Paragraph 8(b) amends paragraph 9(3)(b) of Schedule 2 to the Health and Safety at Work etc Act 1974. This provision excludes members of the Health and Safety Executive Board, or any committee of the Health and Safety Executive Board, from making decisions concerning the enforcement of the relevant statutory provisions in any particular case. The amendment extends this safeguard to cover enforcement of building functions.

Background

840 Schedule 1 amends provisions in the Health and Safety at Work etc. Act 1974 to enable the establishment and work of the new Building Safety Regulator.

Schedule 2: Authorised officers: investigatory powers

Powers of Entry

Effect

841 Paragraph 1 of this Schedule makes available to authorised officers (as defined and appointed under clause 27) the power to enter non-domestic premises, with the support of relevant individuals (such as constables if there is a concern of obstruction) if necessary. Entry may only be made at a time that is reasonable – or at any time if the authorised officer suspects that a dangerous situation exists.

842 Paragraph 2 allows a justice of the peace (magistrate) to issue a warrant for the entry of non-domestic premises where it is necessary that the authorised officer has the option of entering by force.

843 Consistently with Part 3 of the Protection of Freedoms Act 2012, entry to premises that are wholly or mainly domestic in nature is only available either by consent or with prior judicial approval. As such, paragraph 3 of this Schedule allows a justice of the peace to issue a warrant for entry to domestic premises if they consider that it is necessary for an authorised officer to enter to fulfil a relevant purpose and if i) entry has been or is likely to be refused, ii) the occupier or any other person able to grant entry cannot be found or iii) requesting entry may frustrate or seriously prejudice the reason for entry.

844 Entry under any of these powers can be made for a 'relevant purpose', which is defined in paragraph 7 of the Schedule as any relevant building function specified in the officer's authorisation.

845 When on premises under any of these powers, the authorised officer can take samples (including from a suspect structure), measurements, and photographs to aid in their work – they can then take away those samples, e.g. for analysis. An authorised officer can also seize evidence of an offence under either the Building Act 1984 or this Bill where there is a risk the evidence will not be accessible in the future.

Background

846 The physical inspection of buildings during construction will be an important part of the new regime in order to ensure compliance. Paragraphs 1-3 of this Schedule enable officers to require entry to carry out their building safety functions. These paragraphs also provide powers for authorised officers to seize evidence while on the premises.

847 As with many similar powers of entry, where expertise is required during the search beyond that which the officer possesses, they are enabled to take with them individuals with the necessary expertise, including police officers if the authorised officer anticipates they may be obstructed in the execution of the entry or search.

848 These provisions are similar to those of other regulatory bodies, including existing provisions for local authority building control officers under sections 95 and 96 of the Building Act 1984.

Example 1

The Building Safety Regulator suspects that construction work on a site is not being done according to the approved plans and the Building Safety Regulator has not been informed of this change (as will be required in building regulations). The authorised officer is able to visit the construction site, with a relevant expert where necessary, to inspect the premises, confirm the change has been made and investigate whether this change complies with building regulations. The authorised officer will normally enter at a reasonable time.

Example 2

The Building Safety Regulator has received intelligence that unregistered building control inspectors are carrying out building control work (i.e. are claiming to be registered building inspectors), but requires documents confirming this. An authorised officer is able to visit their office and secure documentation showing that such work is being done.

Example 3

The Building Safety Regulator is notified of construction of a higher-risk building commencing without prior approval by the Building Safety Regulator (i.e. approval of a Gateway two application, as detailed in building regulations). The Building Safety Regulator can obtain a warrant from a justice of the peace, as it is likely their entry will be refused, and it may be necessary to use force to enter. An authorised officer, with this warrant, will be able to visit the site, entering using force if necessary, potentially with one or more police officers, and to confirm that work is taking place.

Power to require information, documents etc

Effect

849 Paragraph 4 of this Schedule gives an authorised officer the power to require the provision of relevant information in connection with their building functions. This will be specified by the authorised officer in writing. The information required can be in any form; if it is held electronically, the officer may require that it be made legible and accessible. The officer will have the power to take copies of the information or documents required for further investigation.

Background

850 This power will enable authorised officers of the Building Safety Regulator to gather information, whether from dutyholders such as Accountable Persons or their associates, such as accountants or sub-contractors. The information required will be used by the Building Safety Regulator to ensure compliance and effectively satisfy the functions of the Building Safety Regulator.

851 These provisions are similar to those of other regulatory bodies.

Example 1

The Building Safety Regulator decides to conduct a review of the management of an occupied, higher-risk building. In order to prepare for a site visit to check the building's physical compliance with the requirements of the new regime, an authorised officer issues a notice under paragraph 4 of Schedule 2, requiring the Accountable Person to submit copies of the latest building safety risk assessment, safety case report and building insurance documents.

Offence of failing to provide information, documents etc

Effect

852 Paragraph 6 of this Schedule is designed to ensure that the Building Safety Regulator and its authorised officers are provided with the information necessary to make accurate and appropriate decisions. In the absence of a reasonable excuse, failure to provide the required information will be a criminal offence for which the Building Safety Regulator will be able to bring proceedings. The maximum penalty will be an unlimited fine, along with up to two years' imprisonment in the Crown court or 12 months' imprisonment in a magistrates' court (six months pending the commencement of section 154(1) of the Criminal Justice Act 2003).

Background

853 This offence will be triable either way to deter non-compliance with the Building Safety Regulator and to reflect the gravity of the offence. The Building Safety Regulator requires relevant information to operate effectively and this must be complied with to fulfil that purpose.

Example 1

The Building Safety Regulator decides to conduct a review of the management of an occupied, higher-risk building. In order to prepare for a site visit to check the building's physical compliance with the requirements of the new regime, an authorised officer issues a notice under paragraph 4 of Schedule 2, requiring the Accountable Person to submit copies of the latest building safety risk assessment, Safety Case Report and building insurance documents. The Accountable Person, not wishing to show the Building Safety Regulator that it has not been keeping up to date with its requirements, does not send anything to the Building Safety Regulator. In response, the Building Safety Regulator could carry out a search using its powers in paragraphs 1-3 of Schedule 2 to search for the documentation, which could result in the issue of a compliance notice requiring the documentation to be updated by a set date. Alternatively, or in addition, for example where documentation has not been produced previously by that authorised person, the Building Safety Regulator could launch a prosecution for this offence.

Other provisions

Effect

854 Paragraph 5 of this Schedule makes clear that any material seized under paragraph 1(5) or produced under paragraph 4 of the Schedule can be retained by the Building Safety Regulator for so long as is necessary.

855 Paragraph 7 of this Schedule defines a number of terms used across Schedule 2, while paragraph 8 provides the normal exception from powers of seizure etc. of documents subject to legal professional privilege.

Schedule 3: Co-operation and information sharing

856 The Explanatory Note for this Schedule is provided in the note for clause 32.

Schedule 4: Transfer of approved inspectors' functions to registered building control approvers

857 The explanatory note for this Schedule is provided in the note for clause 45.

Schedule 5: Minor and consequential amendments in connection with Part 3

858 This Schedule contains amendments to the Building Act 1984 and other Acts, that are minor and consequential to measures in the Bill.

859 Paragraphs are grouped together where they have similar effects or are pursuant to the same

These Explanatory Notes relate to the Building Safety Bill as published in Draft on 20 July 2020 (Bill CP 264)

clauses in the Bill.

Paragraphs 2, 16(2), 17(2), 18(2), 19(2), 20, 21(2), 22(2), 24(2), 27(2) and (6)(b), 28, 30, 31, 32, 33, 41, 43, 46, 47, 48, 49, 53, 54, 55, 63

860 These paragraphs do one of two things in recognition that functions previously performed by local authorities may now also be performed by the Building Safety Regulator:

- They change references in the Building Act 1984 from “local authority” to “building control authority” to recognise that functions previously undertaken by local authorities may now be undertaken by the Building Safety Regulator and that the term “building control authority” covers both, as set out in new section 121A of the Building Act 1984, inserted by clause 36; or
- They insert references to the Building Safety Regulator alongside local authorities where the relevant provision relates to the wider roles of local authorities and the Building Safety Regulator under the Act (for example associated with Part 3 of the Act, consequential to clause 55), as well as their roles as building control authorities.

Paragraphs 3, 10(2) and 17(7)

861 These paragraphs amend the penalties in section 3(3) of the Building Act 1984, which sets out the offence of contravening a direction by the Secretary of State in respect of exemptions from all or part of the building regulations, as well as section 10(6) (breach of a direction by the Secretary of State dispensing with or relaxing a particular requirement of building regulations) and section 20(7) (contravention of a condition imposed by a building control authority with respect to the use of a building or the proposed work on that building). These paragraphs remove references to level 5 on the standard scale, as this has been abolished and replaced with an unlimited fine, and also increase the maximum daily fine for ongoing non-compliance from £50 to level 1 on the standard scale (currently £200), reflecting inflation since 1984.

Paragraphs 4, 35(2)(b)

862 These paragraphs delete the reference to “building regulations” in section 5(3)(b) and section 48(1)(b) of the Act in recognition that new section 35 covers both contraventions of building regulations and also requirements imposed under building regulations, as set out in paragraph 25. An example of a requirement imposed under building regulations could be a requirement imposed as part of a building control approval.

Paragraphs 5, 6

Effect

863 These paragraphs amend the existing powers in sections 6 and 7 of the Building Act 1984 which deal with the approval or withdrawal of approval of documents for purposes of building regulations. Under section 6 the Secretary of State may designate a body for the purposes of approving documents by way of making an order.

864 New section 6(5A) and the amendments to section 7 clarify that transitional provisions can be included within notices approving Approved Documents.

865 New section 6(5B) states that a designated body must now obtain the consent of the Secretary of State before approving a document, a revised document or withdrawing an approval.

866 The new section 6(9) allows the order made by the Secretary of State to specify that the designated body may only issue or approve documents which are related to buildings of a prescribed description, work of a prescribed description or prescribed provisions of building regulations.

Background

867 This provision amends section 6 of the Building Act 1984 to include new subsections (5A) and (5B). It also amends section 7 to insert a new subsection (1A).

868 When changes are made to Building Regulations or Approved Documents a transitional period is usually provided to enable persons carrying out the work to become familiar with the new requirements.

Example 1

The Secretary of State decides to designate the Building Safety Regulator as the body to approve document Part B (fire safety) for the purposes of the building regulations. The Secretary of State must make an order to this effect (statutory instrument). If there were some revisions that needed to be made to Part B, the Building Safety Regulator will need to first obtain the consent of the Secretary of State before it can approve this revised document.

The Secretary of State designates the Building Safety Regulator as the body to approve documents to give guidance on Part A (structure) for the purposes of the building regulations. The Secretary of State would like the Building Safety Regulator to only approve guidance about specific provisions detailed within Part A. The order made by the Secretary of State that designates the Building Safety Regulator to approve guidance about Part A may therefore explicitly state for instance that the Building Safety Regulator approves documents in relation to A1 (loading) but not A2 (ground movement).

Paragraphs 7, 8, 9, 14

869 Paragraph 7 inserts a new section 8(3A) into the Building Act 1984 to enable the Building Safety Regulator to issue, on application, dispensations or relaxations from requirements of building regulations where it is the building control authority. Where the Building Safety Regulator is the building control authority applications for dispensations or relaxations can only be made to it. Paragraphs 8 and 9 make consequential amendments to sections 9 and 10, which set out procedural requirements relating to the making and granting of applications for dispensations or relaxations. Paragraph 14 makes a consequential amendment to section 15 of the Building Act 1984.

Background

870 Section 8 of the Building Act 1984 currently enables the Secretary of State, on application by the person undertaking the work, to issue dispensations or relaxation from building regulations' requirements or for building regulations to enable local authorities to exercise this power (which has been done through Regulation 11 of the Building Regulations 2010 (as amended)).

Paragraph 10(3)

Effect

871 Paragraph 10(3) changes the references in section 11 of plans being deposited to an application for building control approval being made as under new paragraphs 1A and 1B of Schedule 1 to the Building Act 1984, inserted by clause 37, a new procedure of applications for building control approval has been introduced to replace the deposit of plans.

Background

872 Section 11 allows for the Secretary of State to issue, on application or of their own accord, relaxations of building regulations' requirements for types of buildings matters.

Paragraph 11

873 Paragraph 11 makes a similar amendment to paragraph 10(3) to section 12 of the Act which provides for the Secretary of State to approve types of building matter.

Paragraph 12 – New section 13A Building Act 1984

Effect

874 This paragraph gives the Building Safety Regulator the ability to suggest proposals to the Secretary of State for the making of building regulations. It requires the Building Safety Regulator to consult with persons that it considers appropriate before making a proposal to the Secretary of State.

875 It also requires the Secretary of State to consult with the Building Safety Regulator and any other persons that the Secretary of State believes are appropriate, before making regulations that have not been proposed by the Building Safety Regulator.

Background

876 This provision adds a new section 13A to the Building Act 1984.

877 The Bill provides for an equivalent provision (clause 7) in relation to regulations to be made under the Bill.

Example 1

The Building Safety Regulator considers that new building regulations relating to Part B (fire safety) are required and should be recommended to the Secretary of State. The Building Safety Regulator must first consult with persons that it considers appropriate, such as the public, on the regulations to be made. Once the Building Safety Regulator has consulted with the relevant persons, it may then make a proposal to the Secretary of State on the building regulations to be made.

The Secretary of State wishes to make building regulations relating to Part A (structure), where proposals in relation to these regulations have not been put forward by the Building Safety Regulator. The Secretary of State must first consult with the Building Safety Regulator and any other persons that they believe is appropriate, such as the public. Once the Secretary of State has consulted with the Building Safety Regulator and appropriate persons, they may then make the regulations.

Paragraph 13

Effect

878 Clause 9 abolishes the Building Regulations Advisory Committee for England (BRAC) as established under section 14 of the Building Act 1984. This paragraph repeals section 14(1)-(4) which deal with the establishment of BRAC, payment of the committee's expenses and requirement for the Secretary of State to consult with BRAC and other bodies before making building regulations.

879 This paragraph inserts the heading 'Wales' above subsections (5)-(8), which deal with the establishment of the Building Regulations Advisory Committee for Wales, and which are not being repealed.

Paragraphs 15, 23, 44, 59(a), 60

880 These paragraphs repeal sections 16, 17, 31 and 124 of the Building Act 1984 pursuant to the introduction of new paragraphs 1A, 1B and 1C into Schedule 1 of the Building Act 1984 under clause 37, and consequential references to those sections in the Building Act 1984. New paragraphs 1A and 1B contain powers to make new requirements for building control applications and building control approvals, including changes to work covered by building control applications, and new paragraph 1C for the giving of certificates.

Background

881 Section 16 of the Building Act 1984 makes provision for the deposit of plans of building work with local authorities. Section 17 makes provision with regard to the approval of persons to give certain certificates. Section 31 makes provision for departures from deposited plans. Section 124 defines deposit of plans in relation to section 16.

Paragraphs 16(3)-(5), 17(3)-(6), 18(3)-(4), 19(3), 21(3)-(4), 22(3)-(5), 34(2), 35(3)(a)-(c), 36(2), 37(a)-(c), 39

882 These paragraphs make amendments to the Building Act 1984 pursuant to the introduction of new paragraphs 1A and 1B into Schedule 1 of the Building Act 1984 under clause 37. New paragraphs 1A and 1B will be used to make building regulations to set out new requirements for building control applications and building control approvals which replace current arrangements for plans of building work to be deposited with local authorities. These amendments replace references to the deposit of plans with references to the making of applications for building control approval.

Paragraph 24(3)

Effect

883 This paragraph amends section 33 of the Building Act 1984 to clarify that tests carried out, or required to be carried out by building control authorities can involve the cutting into, laying open or pulling down of work.

Background

884 Section 33 makes provision to enable building control authorities to require persons undertaking work to carry out tests, or carry out tests themselves of building work or conformity with building regulations' requirements.

Paragraph 25 – Section 35 Building Act 1984

Effect

885 Paragraph 25 of this Schedule replaces section 35 of the Building Act 1984 which creates the offence of contravening building regulations.

886 New section 35 expands the existing offence of contravening building regulations so that it also covers requirements imposed under building regulations; for example, requirements imposed at the time of granting building control approval such as provision of revised plans.

887 The section has also been amended to allow for the Secretary of State to make provision for defences in relation to specific building regulations, to be used by persons whose circumstances meet the criteria of the defence, to dispute a charge against them.

Proposed use of power

888 As part of the new building safety regime dutyholders will be required to establish, operate and report into a Mandatory Occurrence Reporting System. The power created by this section is intended to be used to create two defences in relation to these duties in secondary legislation:

- A defence to the offence of failure to report where the person being prosecuted was not aware of the occurrence which gave rise to the requirement to report, so long as that person had taken all reasonable steps to be made aware, in sufficient time, of the occurrence. This will place the onus on the Principal Contractor and Principal Designer to take steps to become aware of occurrences happening on site.
- The obligation to report will lie on both the Principal Contractor and Principal Designer. In order to avoid duplicate reports of occurrences, it should be a defence to the offence of failure to report within the prescribed period where the person being prosecuted reasonably believed that the other dutyholder (i.e. where the Principal Contractor is being prosecuted, then the Principal Designer, and vice versa) had already reported the occurrence.

Example 1

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

Paragraphs 26 and 27

889 These Paragraphs enable the Building Safety Regulator, acting as a building control authority, to use the enforcement powers in sections 35 (Prosecuting the offence of contravening building regulations) and 36 (Notice requiring removal or alteration of offending work) of the Building Act 1984. In addition, paragraph 27(5) clarifies the protection in section 36 against enforcement action for work done in accordance with previously agreed plans and local authority requirements by making clear that protection applies to work done in accordance with agreed plans and with requirements imposed in accordance with sections 19-25 of the Building Act 1984 (which are the only sections of the Building Act 1984 under which the building control authority can impose requirements). These paragraphs also make a number of changes to terminology to reflect new terminology elsewhere in Act, e.g. replacing 'deposit of plans' with 'application for building control approval'.

890 Paragraph 27(6) also amends s36(6) so that a court can only order the payment of

compensation by a local authority where an injunction is sought to correct non-compliant work for which the local authority has previously given approval and work is done in accordance with that approval and any other requirements imposed.

Paragraph 29

Effect

891 This paragraph repeals the un-commenced section 38 of the Building Act 1984, which would have created civil liability in certain circumstances for non-compliance with building regulations.

Background

892 As part of the June 2019 consultation “Building a Safer Future: Proposals for reform of the building safety regulatory system”, the Government sought views on whether it should commence section 38 and, if so, whether section 38 required any amendment before being brought into force. There was no support for commencing section 38, while discussions with the Scottish Government revealed that no action had ever been brought under the equivalent provision in Scottish law (section 51 of the Building (Scotland) Act 2003). As such, the appropriate course of action is to repeal section 38 without ever bringing it into force.

Paragraph 34(3), 36(3)

893 These are consequential to new section 101A “Appeal: refusal to consider application etc on ground is higher-risk building work” which is inserted by paragraph 32 of Schedule 6. Further detail is provided in the explanatory note for that paragraph.

Paragraph 35(2)(a)

894 The amendment set out in paragraph 35(2)(a) in respect of section 48(1)(a) of the Building Act 1984 extends the existing protection from enforcement action where an initial notice is in force. That protection is extended from the issue of a notice requiring the removal or alteration of offending work under section 36 of the Building Act 1984 to include the new compliance and stop notices described in new sections 35B and 35C. Protection against prosecution under section 35 remains as at present, in section 48(1)(b).

Paragraph 35(3)(d), 37(d)

895 These paragraphs amend sections 48(2) and 51B of the Building Act 1984 to clarify the effect of the automatic lapse of an Initial Notice, or an amended Initial Notice, after three years if work has not commenced, pursuant to clause 40.

Paragraph 38

896 Paragraph 38 amends the maximum penalty in section 52(4) of the Building Act 1984, which sets out the offence of an Approved Inspector failing to give notice to the relevant local authority that the inspector is no longer acting as building control body for a particular project. It makes the same changes to maximum penalties that a magistrates’ court can impose as made in respect of section 3(3) by paragraph 3 above (except that there are no daily fines under section 52).

Paragraph 40

897 This paragraph amends section 57 of the Building Act 1984 to clarify that the offence of giving a notice or certificate that purports to comply with requirements of Part 2 of the Act extends to cover notices or certificates given under building regulations’ requirements, pursuant to clause 37, which have been designated for the purposes of section 57.

Paragraph 42

898 Section 91A of the Building Act 1984 contains a power which may be used to place a duty on local authorities to hold registers of prescribed information and documents in connection with their functions under the Act and building regulations; and this paragraph amends the section so that the power extends to placing duties on the Building Safety Regulator to hold registers of prescribed information and documents for buildings for which it is the regulator.

Paragraph 45: Amendment of section 95 of the Building Act 1984

Effect

899 This paragraph amends section 95 of the Building Act 1984 in line with paragraph 3 of Schedule 2 to this Bill, in that it requires a local authority building control officer to obtain a warrant from a magistrate before making entry without consent to premises that are wholly or mainly used as a private dwelling.

Background

900 Chapter 1 of Part 3 of the Protection of Freedoms Act 2012, in particular the code of practice issued under section 47 of that Act, sets out the principle that entry to private premises for regulatory purposes should generally only be made where it has been authorised in advance by a magistrate. This provision, together with paragraph 3 of Schedule 2 to this Bill, provide for that in respect of the functions in the Building Act 1984 and this Bill.

Paragraphs 50 and 51

901 These paragraphs make minor changes to the enforcement provisions around costs and appeals in sections 102 and 104 of the Building Act 1984, consequential to clause 36.

Paragraph 52

902 This paragraph amends section 106 of the Building Act 1984 to remove the ability to go to a magistrate's court to have compensation determined where the compensation figure does not exceed £50.

Paragraph 56: Amendment of section 112 of the Building Act 1984

Effect

903 This paragraph amends section 112 of the Building Act 1984 in line with clause 28 of this Bill, in that it increases the maximum penalty for obstructing a local authority building control officer from level 1 (currently £200) to level 3 (currently £1000). It carves out authorised officers of the Building Safety Regulator from the obstruction offence, given the creation of the offence of obstructing an authorised officer in clause 28.

Background

904 This paragraph, along with clause 28, mirrors similar provisions supporting staff of other regulatory bodies such as the Food Standards Agency, Financial Conduct Authority and the Health and Safety Executive. The penalty for obstructing a local authority building control officer is very low compared to these other regulators, and indeed the offence of obstructing an authorised officer of the regulator in clause 28, hence this provision increasing it in line with them

Paragraph 57: Amendment to section 113 of the Building Act 1984

905 This paragraph facilitates the Building Safety Regulator to prosecute offences under the Building Act 1984 in the same way as a local authority.

Paragraph 58

906 This paragraph amends section 119 of the Building Act 1984 to enable the Building Safety Regulator as well as the Secretary of State to hold local inquiries on any matter where they make a determination or order, or give a consent or approval under the provisions of the Building Act 1984. Inquiries held using this power will be held in accordance with the provisions of section 250 of the Local Government Act 1972.

Paragraph 59(b)

907 This paragraph amends section 120 of the Building Act 1984, which makes provision for Orders made under the Act, to omit the reference to paragraph 5(2) of Schedule 1 to the Act, consequential to the repeal of paragraph 5 in clause 58.

Paragraph 61

908 This paragraph inserts new terms into section 126 of the Building Act 1984 ("General Interpretation") to make clear that use of those terms in the Act has the meaning given in the clauses referenced, and removes the definition of 'relevant period' consequential to the repeal of section 16.

Paragraph 62

909 This paragraph makes amendments to Schedule 1 of the Building Act 1984:

- consequential to the taking of new powers in clauses 37 and 58 (paragraphs (2) and (5));
- substituting the term "building control authority" for "local authority" pursuant to clause 36 (paragraph (3));
- providing powers for building regulations to make provision for requirements relating to energy efficiency to be made in respect of prescribed classes of building, where building work, as defined, may not be being undertaken (paragraph (4)); and
- clarifying provision for building regulations to include supplementary, incidental or transitional provisions, and to make different provision for different purposes or areas, including different provision for higher-risk buildings and higher-risk building work (paragraph (6)).

Paragraphs 64, 65: Amendments to the Parliamentary Commissioner Act 1967 and Freedom of Information Act 2000

Effect

910 These paragraphs amend the Parliamentary Commissioner Act 1967 and Freedom of Information Act 2000 to reflect the abolition of the Building Regulations Advisory Committee for England (BRAC).

Background

911 The establishment of the new Building Advisory Committee (BAC) has resulted in the abolishment of the Building Regulations Advisory Committee for England. In line with this, provisions within the Building Act 1984, Parliamentary Commissioner Act 1967 (PCA67) and Freedom of Information Act 2000 (FOIA) which make reference to BRAC have been removed.

912 BRAC was subject to the Freedom of Information Act 2000 in its own right. The reference to BRAC is now repealed in Part VI of Schedule 1 to the Freedom of Information Act 2000.

913 BRAC was subject to oversight from the Parliamentary Commissioner for Administration, under the Parliamentary Commissioner Act 1967. The reference to BRAC is now repealed in Schedule 2 to the PCA67.

914 As the Building Advisory Committee is part of the Health and Safety Executive, it will be subject to the FOIA as part of the Health and Safety Executive rather than independently (the Health and Safety Executive appears in Part VI of Schedule 1 to the Freedom of Information Act 2000). The Building Advisory Committee will also be subject to the Parliamentary Commissioner Act 1967 as part of the Health and Safety Executive rather than independently (the Health and Safety Executive appears in Schedule 2 to the Parliamentary Commissioner Act 1967).

Paragraph 66: Repeal of section 4(3) of the Sustainable and Secure Buildings Act 2004

Effect

915 This paragraph repeals section 4(3) of the Sustainable and Secure Buildings Act 2004, which amends the un-commenced section 38 of the Building Act 1984, which is itself repealed by paragraph 29 of this Schedule.

Schedule 6: Appeals and other determinations

916 This Schedule contains amendments to the Building Act 1984 that relate to appeals and other determinations.

Effect

917 This Schedule largely transfers appeals and determinations in the Building Act 1984 from the Secretary of State to the Building Safety Regulator or First-tier Tribunal, and from the magistrates' court to the First-tier Tribunal.

918 This is to align the appeals procedure for all building control decisions to sit with the Tribunal, except where otherwise specified, and to accommodate the Building Safety Regulator's position as a new building control authority and oversight body for other building control bodies.

919 The rationale behind this change is that much of the appeals process currently sits within the civil jurisdiction of the magistrates. This is mainly historical in that at the time of the Building Act 1984, magistrates' courts were common in large to medium sized towns. This is no longer the case. Additionally, numbers of appeals are very low, so there is little opportunity for magistrates or their advisers to generate any expertise in these issues.

920 The First-tier Tribunal, on the other hand, already has expertise of hearings on complicated land and property matters. The transfer of existing work, plus other appeal rights we are creating (for example, compliance and stop notices during design and build, and compliance notices in occupation) will enable it to develop expertise in building and building safety matters.

921 Accordingly, following discussion with the Ministry of Justice and the Tribunal (Property Chamber), we are amending the Building Act 1984 as follows.

922 Paragraphs are grouped together where they have similar effects.

Paragraph 2 - Section 10 (6), Advertisement of proposal for relaxation of building regulation

923 This paragraph sets out where copies of representations should be sent to the Building Safety Regulator in certain circumstances.

Paragraph 3 - Section 20, Use of materials unsuitable for permanent building

924 This paragraph sets out that any appeal of local authority action under section 20 of the Building Act 1984 must now be lodged with the Building Safety Regulator in the first instance. The Building Safety Regulator will take one decision only; this will not go through an internal review. If the developer remains unhappy with the Building Safety Regulator's decision, the appeal will go to the First-tier Tribunal.

925 Any appeal of the Building Safety Regulator's action under this provision must be lodged with the First-tier Tribunal in the first instance.

Paragraph 4 - Section 39, Appeal against refusal etc. to relax building regulations

926 This paragraph sets out that any appeal of local authority action governed by section 39 of the Building Act 1984 must be lodged with the Building Safety Regulator in the first instance. The Building Safety Regulator will take one decision only; this will not go through an internal review. If the developer remains unhappy, the appeal will go to the First-tier Tribunal.

927 Any appeal of the Building Safety Regulator's action under this provision must be lodged with the First-tier Tribunal in the first instance.

928 Subsections (3) to (6) of section 39 are omitted, as they contain procedural provision about appealing to the Secretary of State, which is no longer necessary.

Paragraph 5 – Section 42, Appeal and statement of case to High Court in certain cases

929 This paragraph amends section 42 in regard of appeals under section 20 and 39 since the Secretary of State will no longer give a decision in these proceedings. It also removes references to section 16 (passing or rejection of plans), which is being repealed, and section 50 (plans certificates), as the Secretary of State no longer has involvement in these proceedings.

Paragraphs 6 & 7 – Section 43, Procedure on appeal to Secretary of State on certain matters

930 In these paragraphs, section 43 is omitted and a new section 43A is inserted. This relates to appeals under sections 20, 39 and 50 (use of materials, relaxations, and plans certificates). The effect is that appeals are transferred from the Secretary of State to the Building Safety Regulator where the appeal is against local authority action, and from the Secretary of State to the First-tier Tribunal where the appeal is against a Building Safety Regulator decision.

931 The paragraphs make additional provision for the Building Safety Regulator or First-tier Tribunal, when determining the appeal, to give any directions it considers appropriate for giving effect to its ruling.

Paragraph 8 – Section 50, Plans certificates

932 This section will allow an appeal to the Building Safety Regulator where registered building control approver (formerly known as an Approved Inspector) has refused to give a plans certificate.

Paragraph 9 - Transfer from magistrates' court to the tribunal

933 This paragraph transfers functions as above as listed in paragraph 9, Schedule 6.

Paragraphs 10 – 24

934 These paragraphs replace 'court' with 'tribunal', with the following exceptions:

935 Paragraph 15, under which section 41 allowing an appeal to the Crown Court from the magistrates' court has been omitted.

936 Paragraph 16(c), which omits section 55(3) to remove the reference to further appeals to the Crown Court.

937 Paragraph 24, which omits section 86 (which deals with appeals to the Crown Court from the magistrates' court).

938 Paragraph 25 – Section 98, a power to require an occupier to permit work

939 This paragraph replaces the phrase 'a complaint' with 'an application' and the word 'court' with 'tribunal'. This will mean that an owner of a building can apply to the First-tier Tribunal rather than the magistrates' court where an occupier is preventing works being undertaken.

Paragraph 26 – Section 102, appeal against notice requiring work

940 This paragraph replaces the word 'court' with 'tribunal'.

Paragraph 27 – Section 103, Appeal to the tribunal: procedure (formerly Procedure on appeal or application to magistrates' court)

941 This paragraph makes minor changes to provide for the procedure on application to the Tribunal, and substitutes 'court' with 'tribunal', and 'local authority' with 'relevant authority'.

Paragraphs 28 – 30

942 Paragraphs 28 replaces 'court' with 'tribunal'.

943 Paragraphs 29 and 30 extend 'court' to 'court or tribunal'.

Paragraph 31 – New section 101A Appeal: refusal to consider application etc on ground is higher-risk building work

944 Under the new regulatory regime, the Building Safety Regulator will act as the building control body for higher-risk buildings during construction, responsible for checking building work and verifying that it complies with regulations. Local authority building control, or an Approved Inspector will be the building control body for buildings out of scope of the regime. (NB Approved Inspectors are to become registered building control approvers under clauses in the Bill)

945 The definition of higher-risk buildings will be set out in secondary regulation and the Building Safety Regulator will issue detailed guidance to help developers understand the scope of the regime, assess whether their building fall into the definition and therefore who the correct building control body will be.

946 There may be cases where a developer submits their application to local authority building control or an Approved Inspector and the developer submits an initial notice or amendment notice to their local authority when the development may be in scope of the new regulatory regime. In cases of a dispute, the effect of this clause is to provide a route of appeal should the developer be of the view that the development is out of scope.

947 The local authority has the power to refuse to consider the building control application or an initial notice / amendment notice on the basis that they have determined that the building is in scope of the regulatory regime, and therefore that the Building Safety Regulator must be the building control body.

948 This clause provides for a person who intends to carry out the work to appeal the local authority's decision that their building is in scope of the regime, via the Secretary of State,

should they think that their building is not in scope of the regime. Appeals must be made within a certain time limit, and the relevant appeal fees paid by the appellant. This process will be set out in guidance.

949 The clause provides for a person appointed by the Secretary of State to hear the appeal.

950 The Secretary of State's decision on the facts raised in the appeal will be final. The appellant can make an appeal to the High Court on a point of law.

951 Paragraphs 34(3) and 36(3) of Schedule 5 to the Bill are consequential to this provision and make necessary amendments to the Building Act 1984 with regards to initial notices and amendment notices. The effect of these changes would be that in such cases where the developer and Approved Inspector wrongly submits such a notice then the default deeming rule in section 47(3) and section 51A(5) of the Building Act do not apply. This allows the local authority more time to consider whether the building is in scope.

Example 1

On day one of the new regulatory regime, 'higher-risk buildings' are defined as all multi-occupied residential buildings of 18 metres or more in height, or more than six storeys (whichever is reached first).

A developer has received planning permission on a building one year prior to the introduction of the new regulatory regime. With their planning permission still valid and yet to start construction, the developer must appoint a building control body.

The developer considers whether their building is in scope. In this example, the developer has identified that the building has six storeys and is 16m tall – one of the storeys is tall with a large mezzanine. The developer concludes that the building is therefore not in scope of the regime because they do not count the mezzanine as a seventh storey. The developer submits a building control application to the local authority building control.

Upon considering the building control application, the local authority assesses that the mezzanine level in the building in fact covers over 50 percent of the projected floor space below and therefore counts as another storey as per the building regulations. The local authority refuses to consider the building control application on the basis that the building is seven storeys tall and therefore in scope of the new regime.

In this example, should the developer want to appeal this decision, they would submit an appeal via the Secretary of State. The person appointed by the Secretary of State to decide the appeal could decide whether the appeal will be considered via written representation or following a hearing. If, upon considering the appeal, the person appointed determines on behalf of the Secretary of State that the building is in scope of the regime, then that decision is final.

If it is determined at the appeal that the building would if built be a higher-risk building then the developer must submit their building control application to the Building Safety Regulator before starting construction or change their plans.

Schedule 7: Requirements of the new homes ombudsman scheme

Effect

952 Schedule 7 sets the requirements of the new homes ombudsman scheme by outlining the provisions that the new homes ombudsman must include, and the forms of redress the new homes ombudsman scheme can specify. The new homes ombudsman scheme must be accessible and requires membership of the scheme to be open to all developers.

953 The scheme requirements include matters such as the appointment of an independent individual to be the new homes ombudsman, how to become a member (including member fees and information required) and different categories of member.

954 The scheme must set out in what circumstances and how complaints can be made, and how they will be handled by the scheme. The scheme may investigate complaints relating to non-compliance with a code of practice and must require the new homes ombudsman to have regard to a code of practice approved or issued under clause 109 to determine complaints.

955 The scheme must make provision for the new homes ombudsman to require members of the scheme to resolve well-founded complaints through one or more of the forms of redress listed in the schedule. To enforce the determinations of the new homes ombudsman, the scheme may include provision for the expulsion of a member of the scheme. The scheme must allow for the new homes ombudsman to make recommendations where widespread problems or poor developer conduct are identified to improve standards.

956 The scheme must also set out how complaints can be made against the new homes ombudsman scheme itself, arrangements for working with other redress schemes, how the scheme provides information to the Secretary of State and how the new homes ombudsman scheme reports its activity.

Background

957 This is a new provision.

Example 1

The new homes ombudsman scheme will be required to include details about the scheme in a number of areas so that it is clear what the scheme does and how it operates, and to ensure that the scheme is effective and can carry out the functions required. Any proposals to administer the new homes ombudsman scheme would be required, at the very least, to meet the requirements set out under this schedule.

These requirements are intended to help consumers know how to access the scheme, how complaints will be handled, including the new homes ombudsman having regard to a code of practice and determinations the new homes ombudsman can make to resolve issues, such as compensation. The scheme may enforce determinations through expulsion of members of the new homes ombudsman scheme, which provides an incentive to comply with determinations made by the new homes ombudsman.

The schedule sets out the requirement that the scheme must make provision as to how information is provided to the Government and the reports that it makes, which could be annual reports or case reports to highlight issues and recommend

improvements. The scheme may be able to include further provision not set out in the schedule.

Schedule 8: Construction products regulations

Paragraph 1

Effect

958 This power will be used to create regulations by the Secretary of State for the marketing and supply of construction products in the United Kingdom.

Proposed use of power

959 This will be achieved in three ways: (a) for designated products (products which perform to a designated standard), (b) to create a list of safety critical products (where the failure of such products would result in death or serious injury) and (c) for all construction products on the market not otherwise designated, subject to a United Kingdom Technical Assessment, or on the list of safety critical products are subject to a general safety requirement. This is set out in more detail in the paragraphs below.

Background

960 The existing regulatory framework does not cover all construction products that might present a safety risk. These regulations seek to correct this by extending the regulatory framework to all construction products.

Paragraphs 2 - 6 - Construction products with designated standards

Effect

961 These paragraphs allow the Secretary of State to impose standards of product performance and other specific requirements to be met by economic operators (manufacturers, their appointed representatives, importers and distributors of construction products) where there is a designated standard.

962 These powers cover the United Kingdom. These paragraphs give the Secretary of State powers to set up a regime for ensuring that certain construction products once on the UK market must perform to designated standards. This will mean that reliable information is available to professionals, public authorities, and consumers, that the performance of such products can be monitored, assessed and verified and where appropriate withdrawn from the market

Proposed use of this power

963 This power can be used to replace the existing EU based regime with a UK regime and design it to meet the demands of the UK.

Background

964 The current regulatory regime for construction products derives from EU law. This power will allow the Secretary of State to amend that regime, or replace it.

Example 1

Designated products currently fall under existing EU harmonised standards, and in the future designated products can be added under new EU harmonised standards,

where the Secretary of State chooses to designate them. These products are subject to the existing regulatory regime derived from EU law. Going forward, now we have flexibility to change this regime for the UK, the Secretary of State may want to revise the regulations for these products to reflect national wishes and concerns, and to ensure that it continues to meet the needs of the UK market.

In addition, relevant authorities can be given the power to impose further requirements on manufacturers, importers or distributors of such products, including withdrawing the product from the market. A relevant authority means a local authority (including England, Wales and Scotland in its capacity as a local weights and measures authority), the Secretary of State or other Minister of the Crown.

Paragraphs 7 - 10 - Safety-critical products

Effect

965 These paragraphs give the Secretary of State the power to create a list of safety critical construction products, regulate those products and create powers of enforcement. These are products which, if they fail as part of a construction, could cause death or serious injury to a person. This list will not include products subject to a designated standard or to a UK technical assessment. These products will be identified with the assistance of industry and others as the Secretary of State considers appropriate. These products will be subject to equivalent regulation to products subject to a designated standard.

966 In addition, relevant authorities can be given the power to impose further requirements on manufacturers, importers or distributors of such products, including withdrawing the product from the market.

Proposed use of power

967 To create the regulations as described above.

Background

968 This is a new provision.

969 The consequences of the Grenfell Tower fire revealed there is gap in the regulation of construction products if they are not covered by an EU harmonised standard or regulated as a consumer product. The purpose of this power is to remove this gap for products the Secretary of State identifies as safety critical.

Example 1

Should the Secretary of State consider (following consultation) a particular construction product, for example a type of fire door should be included in the safety critical list, the Secretary of State will be able to commission the creation of a standard which will mean any purchaser or user of this product (on the UK market) will know how it will perform, and the performance can be monitored and where necessary enforcement action taken.

Paragraph 11-12 - General safety requirements

Effect

970 The paragraph gives the Secretary of State the power to create regulations to ensure that all construction products placed on the UK market, which are not designated, covered by a United Kingdom Technical Assessment, or on the safety critical list, are safe. The definition of safe is that a product does not present any risk, beyond any risk inherent in using the product, to the health or safety of persons and assumes the product is used and/or installed in the expected manner.

Proposed use of power

971 The regulations will contain requirements dealing with the assessment of risk and taking steps to avoid that risk that can be imposed on manufacturers, importers or distributors. The regulations will also contain market surveillance powers and powers to enforce where such products are not safe.

Background

972 These will be new powers. Following the Grenfell Tower fire, it became apparent there was no general safety requirement applicable to construction products. Such products are not covered by consumer protection legislation. This power allows the Secretary of State to create a requirement that all construction products placed on the UK market, not subject to a designated standard, a United Kingdom Technical Assessment or included in the safety critical list are safe, regulate this requirement and enforce where it is not met.

Example 1

A manufacturer launches a new kind of brick tie onto the market. This product is not covered by a designated standard or a United Kingdom Technical Assessment and has not been added to the safety critical list yet. After a few months in use, these brick ties begin to fail, bringing about the risk that walls using these ties will collapse, injuring passers-by. The proposed regulations will require the manufacturer to ensure their products are safe by considering the risks associated with the products, minimise them and provide information about remaining risks. Where, as in this example, the product is not safe, the manufacturer will be required to withdraw the product from the market and correct the product. It will allow regulators to take action if they do not do so, and to bring a prosecution against the manufacturer if necessary.

Paragraph 13 - Enforcement

Effect

973 These powers will allow the Secretary of State to create market surveillance and enforcement powers relating to the regulation of designated products, United Kingdom Technical Assessments, products on the safety critical list and the requirement for products to be safe.

Proposed use of power

974 This power can be used by the Secretary of State to create a suitable enforcement regime, give such powers to the appropriate authorities (for example Trading Standards) and create powers that can be exercised by the Secretary of State in appropriate circumstances, for example if a national safety issue is identified through use of the market surveillance powers.

975 Paragraph 13(4) allows for provision for the forfeiture of products paragraph 13(5) for the creation of both criminal offences and civil penalties, paragraph 13(6) for provision for appeals, paragraph 13(7) for the penalties which may be imposed.

Background

976 The Independent Review recommended that Government should ensure that there is a more effective enforcement regime with national oversight to cover construction product safety. The current regulatory framework sets out the enforcement and market surveillance powers of the Secretary of State and Trading Standards in relation to products where there is a designated standard or a United Kingdom Technical Assessment. These regulations create equivalent provisions for enforcement for products included on the safety critical list and those covered by the requirement to be safe, and ensure that Trading Standards and other enforcement bodies have appropriate powers to regulate and monitor compliance with and enforce the regulations.

Example 1

If, for example, it is found a certain brand of fire doors on the UK market is unsafe, or not performing to standard, the Secretary of State or the relevant authority will have all the powers needed to ensure these products are either made safe or taken off the market and appropriate enforcement action taken to support this.

Paragraph 14 – Information Sharing

Effect

977 This paragraph gives the Secretary of State power to make provision for the sharing of information between relevant authorities (as defined) and a list of authorities which may hold or obtain information relevant to the regulation of construction products.

Proposed use of power

978 To provide for sharing of information to support the effective regulation of construction products in the UK.

Background

979 There are a number of bodies in the UK which have a regulatory or enforcement function although not directly involved in the enforcement of construction products regulations but are likely to have or obtain, in the course of the exercise of their functions, information about unsafe construction products. A power to share this information with the relevant regulatory authority for construction products will support the effective regulation of such products.

Example 1

If, for example, a Fire and Rescue Authority in England has information about the contribution to the spread of fire of a particular construction product, the Fire and Rescue Authority will be able to share that information with the relevant regulator, who would then be in a position to investigate and take any appropriate enforcement action.

Paragraphs 15 and 16 - General and supplementary

980 Paragraph 15 provides that different provisions may be made for different purposes and for different parts of the United Kingdom. This may be necessary in Northern Ireland for implementation of the effect of the Northern Ireland Protocol. Paragraph 15(1)(c) provides for transitional, transitory, consequential or supplementary provisions or savings.

981 Paragraph 16 gives a power to repeal, amend or re-enact retained EU law which deals with construction products, regulations made under s.2(2) of the European Communities Act 1972 which deal with enforcement and market surveillance in relation to construction products and any enactment made under paragraph 15(1)(c).

Paragraph 17 - Procedure

982 This paragraph provides that regulations under the Act are to be made by statutory instrument. The regulations stipulate that the creation of the list of safety critical products and any criminal offences are subject to the affirmative procedure. Otherwise, they are subject to the negative procedure.

Paragraph 18 – Interpretation

983 This paragraph explains what is meant by the key terms in this schedule.

Commencement

984 The provisions of this Act come into force on such day as the Secretary of State may by regulations appoint, subject as follows.

985 The following provisions of this Bill come into force on the day on which Royal Assent is received:

- Clause 16;
- Clause 19;
- Clause 78;
- Clauses 115 to 119

986 The following provisions come into force at the end of the period of two months beginning with the day on which Royal Assent is received:

- Clause 110 (and schedule 8);
- Clause 111;
- Clause 112.

Financial implications of the Bill

987 Financial implications of the Bill include, but are not limited to:

- The establishment and running of the national Building Safety Regulator within the Health and Safety Executive;
- Additional activities for local enforcement bodies, including Fire and Rescue Services and Local Authority Building Control functions, to support the

These Explanatory Notes relate to the Building Safety Bill as published in Draft on 20 July 2020 (Bill CP 264)

functions of the Building Safety Regulator;

- Additional activities for Local Housing Authorities as dutyholders for their housing stock, insofar as it falls within scope of the Bill;
- The establishment and running of a regulatory role covering construction products, covering the whole of the UK;
- Additional activities within the justice system, to support enforcement.

Parliamentary approval for financial costs or for charges imposed

988 A money resolution will be laid with the Bill on introduction, and is expected to cover costs in relation to:

- Establishing the new Building Safety Regulator, responsible for implementation of the new, more stringent regulatory regime (for higher-risk buildings), and for coordinating joint working with local regulators and enforcement bodies including Local Authority Buildings Control and Fire and Rescue Services. This may involve costs to Government, local authorities and Fire and Rescue Services, though the intention is that costs for the regime should be recovered from industry so far as is possible.
- Establishing a new national construction products regulatory role, responsible for market surveillance, oversight and enforcement at local and national level, advice and support to the industry, and technical advice to the Government.
- Authorisation for the payments of financial penalties imposed by courts in relation to the statutory obligations proposed in this Bill into the Consolidated Fund.

Compatibility with the European Convention on Human Rights

989 Rt Hon Robert Jenrick, Secretary of State for the Ministry of Housing Communities and Local Government proposes to make a statement before introduction that in his view the provisions of the Building Safety Bill are compatible with the Convention rights.

Related documents

990 The following documents are relevant to the Bill and can be read at the stated locations:

Independent Review of Building Regulations and Fire Safety

- [Building a Safer Future - Independent Review of Building Regulations and Fire Safety: Final Report](#), May 2018.

Consultations

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- [Building a Safer Future: Proposals for Reform of the Building Safety Regulatory System](#), June 2019.
- [A Reformed Building Safety Regulatory System: Government Response to the 'Building a Safer Future' Consultation](#), April 2020.
- [A Reformed Building Safety Regulatory System: Summary of Responses to the 'Building a Safer Future' Consultation](#), April 2020.

Relevant legislation

- [Architects Act 1997;](#)
- [Building Act 1984;](#)
- [The Building Regulations 2010;](#)
- [Construction \(Design and Management\) Regulations 2015;](#)
- [The Construction Product Regulations 2013 \(2013/1387\);](#)
- [The Construction Products \(Amendment, etc\) \(EU\) Regulations 2019 \(2019/465\)](#)
- [EU Construction Product Regulations EU No 305/2011;](#)
- [Health and Safety at Work etc. Act 1974;](#)
- [Housing Act 1996;](#)
- [Landlord and Tenant Act 1985](#)

Annex A - Territorial extent and application in the United Kingdom

991 The table below provides a summary of the position regarding territorial extent and application in the United Kingdom.⁸

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the Senedd? <i>Please see footnote below</i>	Would corresponding provision be within the competence of the Scottish Parliament? <i>Please see footnote below</i>	Would corresponding provision be within the competence of the Northern Ireland Assembly? <i>Please see footnote below</i>	Legislative Consent Motion needed?
Part 1 (Clause 1) (Introduction)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Part 2 (Clauses 2-8) (The regulator and its general functions)	Yes	No	No	No	Yes	Yes	Yes	No
Part 2 (Clauses 9-12) (Committees)	Yes	No	No	No	Yes	Yes	Yes	No
Part 2 (Clauses 13-15) (Staff etc)	Yes	No	No	No	Yes	Yes	Yes	No
Part 2 (Clauses 16-18) (Building Safety)	Yes	No	No	No	Yes	Yes	Yes	No

⁸ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

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Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the Senedd? <i>Please see footnote below</i>	Would corresponding provision be within the competence of the Scottish Parliament? <i>Please see footnote below</i>	Would corresponding provision be within the competence of the Northern Ireland Assembly? <i>Please see footnote below</i>	Legislative Consent Motion needed?
Risks)								
Part 2 (Clauses 19-22) (Higher-risk buildings)	Yes	No	No	No	Yes	Yes	Yes	No
Part 2 (Clauses 23-26) (Plans and reports)	Yes	No	No	No	Yes	Yes	Yes	No
Part 2 (Clauses 27-29) (Enforcement)	Yes	No	No	No	Yes	Yes	Yes	No
Part 2 (Clauses 30-31) (Reviews and appeals)	Yes	No	No	No	Yes	Yes	Yes	No
Part 2 (Clause 32-35) (Supplementary and general)	Yes	No	No	No	Yes	Yes	Yes	No
Part 3 (Clauses 36-43) (Building control authorities and building regulations)	Yes	No	No	No	Yes	Yes	Yes	No
Part 3 (Clauses 44-54)	Yes	No	No	No	Yes	Yes	Yes	No

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Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the Senedd? <i>Please see footnote below</i>	Would corresponding provision be within the competence of the Scottish Parliament? <i>Please see footnote below</i>	Would corresponding provision be within the competence of the Northern Ireland Assembly? <i>Please see footnote below</i>	Legislative Consent Motion needed?
documents)								
Part 4 (Clauses 82-85) (Engagement with residents etc)	Yes	No	No	No	Yes	Yes	Yes	No
Part 4 (Clauses 86-87) (Residents' duties)	Yes	No	No	No	Yes	Yes	Yes	No
Part 4 (Clauses 88-89) (Recovery of safety related costs)	Yes	No	No	No	Yes	Yes	Yes	No
Part 4 (Clauses 90-94) (Enforcement)	Yes	No	No	No	Yes	Yes	Yes	No
Part 4 (Clauses 95-100) (Special measures)	Yes	No	No	No	Yes	Yes	Yes	No
Part 4 (Clauses 101-105) (Miscellaneous and general)	Yes	No	No	No	Yes	Yes	Yes	No
Part 5 (Clauses 106-109) (New	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes (NI, S, W)

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Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the Senedd? <i>Please see footnote below</i>	Would corresponding provision be within the competence of the Scottish Parliament? <i>Please see footnote below</i>	Would corresponding provision be within the competence of the Northern Ireland Assembly? <i>Please see footnote below</i>	Legislative Consent Motion needed?
homes ombudsman scheme)								
Part 5 (Clause 110) (Construction products)	Yes	Yes	Yes	Yes	No	No	No	No
Part 5 (Clauses 111-112) (Architects)	Yes	Yes	Yes	Yes	No	No	Yes	No
Part 5 (Clause 113) (Housing complaints)	Yes	No	No	No	Yes	Yes	Yes	No
Part 5 (Clauses 114-119) (General)	Yes	No	No	No	No	No	No	No
Schedule 1: Amendments of the Health and Safety at Work etc Act 1974	Yes	Partially (paragraph 8(a) only)	Partially (paragraph 8(a) only)	No	Yes	Yes	Yes	No
Schedule 2: Authorised officers: investigatory powers	Yes	Partially (paragraphs 1-3)	No	No	Yes	Yes	Yes	No
Schedule 3: Co-operation and information sharing	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 4: Transfer of approved	Yes	No	No	No	Yes	Yes	Yes	No

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Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the Senedd? <i>Please see footnote below</i>	Would corresponding provision be within the competence of the Scottish Parliament? <i>Please see footnote below</i>	Would corresponding provision be within the competence of the Northern Ireland Assembly? <i>Please see footnote below</i>	Legislative Consent Motion needed?
inspectors' functions to registered building controllers								
Schedule 5: Minor and consequential amendments in connection with Part 3 (Part 1: Amendments of the Building Act 1984)	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 5: Minor and consequential amendments in connection with Part 3 (Part 2: Other amendments)	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 6: Appeals and other determinations	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 7: Requirements of the new homes ombudsman scheme	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes (NI, S, W)

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Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the Senedd? <i>Please see footnote below</i>	Would corresponding provision be within the competence of the Scottish Parliament? <i>Please see footnote below</i>	Would corresponding provision be within the competence of the Northern Ireland Assembly? <i>Please see footnote below</i>	Legislative Consent Motion needed?
Schedule 8: Construction products regulations	Yes	Yes	Yes	Yes	No	No	No	Potentially for information sharing provisions

Footnote 1: Parts 2-4 give functions to the Health and Safety Executive. The HSE is a reserved body and the devolved legislatures cannot give it functions. For the purposes of this table, we have set out whether the devolved legislatures could make corresponding provision to give functions of the kind in Parts 2-4 of the Bill to a non-reserved regulatory body.

Minor or consequential effects⁹

992 The following provisions that apply to England have effects outside England, all of which are, in the view of the Government of the United Kingdom, minor or consequential:

Paragraphs 1-3 of Schedule 2

993 These paragraphs allow entry to premises in Wales where necessary for the regulator to carry out its building functions, which relate to buildings in England only. This power of entry in Wales may be used, for example, where a registered building control approver is suspected of an offence under the Building Act 1984, and it has an office in Wales where there is likely to be evidence relevant to the offence. We consider that the effects of these provisions in Wales are minor or consequential.

Subject matter and legislative competence of devolved legislatures

994 Part 2 of the Bill creates the objectives, general functions and powers, committees, enforcement powers, and planning and reporting requirements, of the Building Safety Regulator within the Health and Safety Executive. The Regulator will regulate buildings in England, in relation to the subject matters of design and construction of buildings and housing. The Health and Safety Executive itself exists in England, Wales and Scotland; it is reserved in Wales under paragraphs 155 and 156 (J6), and 197 (reserved authorities) of Schedule 7A to the Government of Wales Act 2006, and reserved in Scotland under paragraph H2 of Part 2, and paragraph 3 of Part 3 (reserved authorities) of Schedule 5 to the Scotland Act 1998. As described above, the devolved legislatures cannot give functions to the Health and

⁹ References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Safety Executive. However, the subject matter of the areas in which the Regulator will regulate are devolved in all three devolution settlements (design and construction of buildings and housing) and so the devolved legislatures could make corresponding provision to confer regulatory powers on a different regulatory body.

995 Part 3 of the Bill makes amendments to the Building Act 1984, and some minor and consequential related amendments in Part 2 of Schedule 5. Part 3 extends to England and Wales and applies to England only. The subject matter for Part 3 is the design and construction of buildings, which is devolved in all three devolution settlements. Notably, in Scotland the Scottish Parliament has enacted the Building (Scotland) Act 2003, which covers many of the same matters as the Building Act 1984.

996 Part 4 of the Bill defines and imposes obligations on those with responsibility for the management/repair of high-rise residential buildings within the scope of this regime and creates a regime for these obligations to be paid for and to be enforced by the Building Safety Regulator within the Health and Safety Executive. These obligations relate to the subject matters of housing and fire safety, and cover: the definition of those accountable for defined residential buildings and imposition on them of obligations to carry out assessments of fire and structural safety risks, take steps to reduce such risks, obtain, keep and disseminate information about the building, risk-assessments and decision-making to the building's residents, the regulator and other key parties, and appoint a specialist safety manager. They also set up a system of registration and compliance-checking by the Regulator, requiring the accountable persons to apply for building assurance certificates. They impose duties on the building's residents to co-operate with the accountable persons and to keep safety-related items in repair. These subject matters are devolved in all three devolution settlements, with the Senedd having notably issued the Housing (Wales) Act 2014 which regulates the private rented housing sector in Wales and inter alia requires landlords to register and obtain licences for dwellings they let out, and the Northern Ireland Assembly having made for instance the Private Tenancies (Northern Ireland) Order 2006. The Scottish Parliament has legislative competence over fire safety and housing in Scotland and has, for instance, made legislation relating to dealing with disrepair in private housing in the Housing (Scotland) Act 2006.

997 The subject matter of the provisions of the Bill in Part 5, in relation to the new homes ombudsman scheme, is housing which is a devolved matter in Scotland, Wales and Northern Ireland.

998 Housing is not a reserved matter under Schedule 5 of the Scotland Act 1998. The Scottish Parliament has legislative competence over housing in Scotland. For example, in the area of redress schemes, in Scotland complaints may be made about housing associations to the ombudsman for public services, established by the Scottish Public Services Ombudsman Act 2002.

999 Housing is not a reserved matter under Schedule 7A of the Government of Wales Act 2006. The Senedd has legislative competence in relation to housing in Wales. As an example of legislation in this field, complaints may be made about social housing matters to the ombudsman for public services, established by The Public Services Ombudsman (Wales) Act 2019.

1000 Housing is within the legislative competence of the Northern Ireland Assembly as it is neither reserved under Schedule 3 to the Northern Ireland Act 1998 or excepted under Schedule 2 to that Act. As an example of legislation in the field of redress, complaints about social housing matters may be made to the ombudsman established by the Public Services Ombudsman Act (Northern Ireland) 2016.

1001 The subject matter of the provisions of the Bill in clause 110 and Schedule 8 relate to the

regulation of construction products in the UK. Products standards, safety and liability is a reserved matter under Schedule 5 of the Scotland Act 1988 (C8); it is similarly a reserved matter under paragraph 38 of Schedule 3 to the Northern Ireland Act 1998 and Schedule 7A to the Government of Wales Act 2006 (C7). Information sharing for the purposes of this regulation may engage the legislative consent process in relation to the Scottish Parliament, the Senedd and Northern Ireland Assembly. However, the details of this remain to be worked out and whether or not legislative consent will be sought will depend on the extent, if any, of information sharing intended to be included in regulations.

- 1002 The subject matter of the provisions of the Bill in clauses 111 and 112 relates to the functions of the Architects Registration Board, the professional regulator of architects in the UK.
- 1003 The regulation of the profession of architect is a reserved matter in Wales under paragraph 140(a) of Schedule 7A to the Government of Wales Act 2006, and in Scotland under section G1 of Part 2 of Schedule 5 to the Scotland Act 1998.
- 1004 The regulation of the profession of architect is within the legislative competence of the Northern Ireland Assembly as it is neither reserved under Schedule 3 to the Northern Ireland Act 1998 or excepted under Schedule 2 to that Act. The Northern Ireland Assembly has not legislated to create a regulator for architects and the Architects Registration Board (ARB), the body to which the proposed amendments to the Architects Act 1997 relate, operates in Northern Ireland and is a UK-wide regulator. A Legislative Consent Motion is therefore not being sought from the Northern Ireland Assembly; informal consent has been sought through exchange of letters.

Annex B – Glossary

Term	Notes
Accountable Person	The dutyholder during a building's occupation.
Approved Documents	Guidance detailing ways to meet building regulations. These contain general guidance on the performance expected of materials and building work in order to comply with the building regulations and practical examples and solutions on how to achieve compliance for some of the more common building situations.
Approved Inspector	Old system name for a private sector building control body, now called a registered building control approver.
Building Advisory Committee	New expert advisory committee set up by the Building Safety Regulator to provide advice and information to the Building Safety Regulator in relation to its functions.
Building Assurance Certificate	A certificate that an Accountable Person must apply for and the Building Safety Regulator will provide if it is satisfied that the Accountable Person is complying with meeting the statutory obligations placed on them.
Building control	A statutory process of ensuring that building work complies with building regulations' requirements including by assessing plans for building work and building work on site.
Building control authority	A generic name used for local authorities and the Building Safety Regulator in situations where either may be responsible for Building Act matters or checking compliance with Building Regulations' requirements.
Building control functions	Activities exercised by Building Control Bodies that ensure that the requirements of the building regulations are met in relation to building work. Examples include examining plans, specifications and other documents submitted for approval, and survey work as it proceeds.
Building regulations	Technical and procedural requirements which persons undertaking building work must meet.

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Building Regulations Advisory Committee (BRAC)	Advisory committee established under (former) section 14 Building Act 1984 for the purpose of advising the Secretary of State on the exercise of the Secretary of State's power to make building regulations, and on other subjects connected with building regulations. This committee is set to be abolished under section 9 of the Building Safety Act and be replaced by the Building Advisory Committee.
Building Safety Manager	Named by the Accountable Person, the Building Safety Manager will support the Accountable Person by carrying out the day to day functions of ensuring that the building is safely managed and promote the openness, trust and collaboration with residents that is fundamental to keeping buildings safe.
Building Safety Regulator	The Building Safety Regulator will be set up within the Health and Safety Executive, and make buildings safer through the implementation and enforcement of the new more stringent regulatory regime for buildings in scope, stronger oversight of the safety and performance of all buildings, and assisting and encouraging competence among the built environment industry, and registered building inspectors
Building safety risks	A risk to the safety of persons in or about a building arising from the occurrence of fire, structural failure or any other matter prescribed in regulation.
Buildings in scope	Refers to those buildings (described in the Bill as 'higher-risk buildings') which will be within the scope of the new regulatory regime provided for in Parts 3 or 4 of the Bill
Building work	Work on buildings to which building regulations apply, principally the construction and extension of buildings, material changes of use and material alterations.
Common parts	Those parts of in-scope buildings (such as a block of flats) which are used by the residents of more than one flat (such as the corridors and fire-escape routes) and includes the structure and exterior of the building.
Committee on Industry Competence	New industry-led, expert committee set up by the Building Safety Regulator to facilitate improvement in the competence of the built environment sector.
Compartmentation	The sub-division of a building into parts to prevent the

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	spread of fire to or from another part of the same building or an adjoining building. For example, compartment walls and floors with a rated period of fire resistance are provided to separate individual flats.
Construction (Design and Management) Regulations 2015	The main set of regulations for managing the health, safety and welfare of construction projects.
Dutyholders	The key roles (whether fulfilled by individuals or organisations) that are assigned specific responsibilities at particular phases of the building life cycle.
Fire and Rescue Authorities (FRA)	In England and Wales, a fire authority or fire and rescue authority is a statutory body, usually made up of a committee of local councillors which oversees the policy and service delivery of a fire and rescue services. There are some variations to this model in England, where the functions of four Fire and Rescue Authorities are delivered by the local Police and Crime Commissioner (in these areas the PCC is known as a Police, Fire and Crime Commissioner), the Mayor of Greater Manchester is responsible for FRA functions in that area, and there are separate provisions for London, which has a dedicated Fire Commissioner
Fire and Rescue Services (FRS)	The Fire and Rescue Service is the operational fire brigade, delivering all the functions associated with that role, and headed by a Chief Fire Officer. FRS's are overseen by FRA's and cover the identical geographical area to the FRA.
Fire risk assessment	A fire risk assessment is an organised and methodical look at the premises, the activities carried on there and the likelihood that a fire could start and cause harm to those in and around the premises. Under the Fire Safety Order, the aims of the fire risk assessments are to identify the fire hazards, to reduce the risk of those hazards causing harm to as low as reasonably practicable and to decide what physical fire precautions and management arrangements are necessary to ensure the safety of people in the premises if a fire does start.
First-tier Tribunal	In England, the First-Tier Tribunal (Property Chamber) is the specialist forum which determines a range of disputes in relation to property and land. These include questions relating to leasehold service charges, enfranchisement, park homes and land registration. The

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	First-Tier Tribunal is intended to be accessible to parties acting 'in person' i.e. without legal representation, and it does not generally award legal costs. Decisions made by the First-Tier Tribunal can be appealed against in the Upper Tribunal (Lands Chamber).
Gateway one, two and three	Three key stages in the building development where the duty-holder must demonstrate that they are managing building safety risks appropriately before they are permitted by the relevant regulator to continue to the next stage of development.
Golden thread of information	Fire and structural safety building information held digitally to specific standards. These standards will include requirements around robust information management and keeping the information up to date. The golden thread will ensure that those responsible for the building have the required information to manage building safety during throughout the lifecycle of the building.
Higher-risk buildings	The technical term for buildings in scope of the new more stringent regulatory regime, as defined in the Bill.
The Housing Ombudsman	The Housing Ombudsman provides redress for social housing residents. The Ombudsman's scheme, approved by the Secretary of State under Section 51 of, and Schedule 2 to, the Housing Act 1996. Membership of the Scheme is compulsory for social landlords (primarily housing associations who are or have been registered with the social housing regulator) and local authority landlords.
Mandatory Occurrence Reporting System	The Mandatory Occurrence Reporting System will require dutyholders across all stages of the building life cycle to report fire and structural safety occurrences to the Building Safety Regulator which could pose a significant risk to life. Dutyholders will also be required to establish an internal framework for the monitoring of occurrences which might arise.
Multi-disciplinary team	Refers to a team which may be put in place by the Building Safety Regulator when it regulates buildings in scope. The team would include a fire safety expert, typically from the relevant Fire and Rescue Service, and a building control specialist, typically from the relevant

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	local authority.
New Homes Ombudsman	An independent third party to provide alternative dispute resolution service between developers and purchasers of new build homes, and to remedy complaints.
Operational Standards Rules	Rules for local authorities and building control bodies setting out the performance requirements to be met in the exercise of their building control functions.
Principal Contractor	Under the Construction (Design and Management) Regulations 2015 a principal contractor is a contractor appointed by the client to be in control of the construction phase of the project when there is more than one contractor working on the project. The principal designer can be an organisation or an individual.
Principal Designer	Under the Construction (Design and Management) Regulations 2015, a principal designer is a designer appointed by the client to be in control of the pre-construction phase of the project, when there is more than one contractor working on the project. The principal designer can be an organisation or an individual.
Refurbishment	A change made to a building and should be subject to consideration about how the change affects or might affect the safety of people in the building with respect to building safety risks
Registered building control approver(s)	Formerly known as an Approved Inspector or a building control body under the old regulatory system. Refers to private sector firms doing building control work.
Registered building inspector	Refers to individual inspectors that are registered by the Building Safety Regulator.
Resident	A “resident” of a dwelling is a person who lawfully resides there, regardless of tenure.
Residents’ Engagement Strategy	This is the means by which those living in buildings covered by the new regulatory regime can get more involved in the decision-making in relation to the safety of their homes. It will set out the approach and the activities that the Accountable Person will undertake to

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	deliver these opportunities for all residents to participate.
Residents' panel	A statutory committee to be set up by the Building Safety Regulator. The residents' panel will be made up of residents and representatives/advocates of residents, and advise the Building Safety Regulator on strategy, policy, systems and guidance which will be of particular interest to residents of higher-risk buildings.
Responsible Person	Under the Regulatory Reform (Fire Safety) Order 2005, a responsible person for a workplace is the employer or, in premises which are not a workplace, the person who has control of the premises in connection with carrying on of a trade, business or other undertaking (whether for profit or not) or the owner.
Safety Case Report	A structured argument, supported by a body of evidence that provides a compelling, comprehensible, evidenced and valid case as to how the Accountable Person is proactively managing fire and structural risks in order to prevent a major incident and limit the consequences to people in and around the building.
Special Measures Manager	A court appointed manager who has been put in place by the Building Safety Regulator in circumstances where there have been repeated breaches of the statutory obligations by the Accountable Person under the Building Safety Regime. The manager will manage the fire and structural safety of the building in accordance with measures as set out in an order made by the court.

BUILDING SAFETY BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Building Safety Bill as published in Draft on 20 July 2020 (Bill CP 264).

Ordered by the Department to be printed, 20 July 2020

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PUBLISHED BY AUTHORITY OF THE DEPARTMENT

ISBN 978-1-5286-2088-8
CCS0720845094