Department for Levelling Up, Housing & Communities

To all MPs

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19 April 2022

Dear colleagues,

UPDATE ON GOVERNMENT APPROACH TO BUILDING SAFETY

I wrote last week to provide an update on the negotiations I have been conducting with industry with regards to Building Safety. I am now following up with further detail on the changes made to the Building Safety Bill ahead of its return to the House of Commons.

In January I updated the House on the Government's renewed approach to Building Safety. I set out three principles that would underlie our new approach to tackling these issues:

1. We must make industry pay to fix the problems for which it is responsible.
2. We must protect leaseholders.
3. We must restore common sense to the assessment of building safety risks, speeding up fixing the highest risk buildings and stopping buildings being declared unsafe unnecessarily.

Since then, I have written to you twice about changes we have made to the Bill to deliver the commitments made in that statement. These amendments restore fairness to the system and help those unfairly affected by building safety issues. We have introduced mechanisms to restore proportionality to building safety, ensuring that those who bear responsibility are made to pay, and to protect leaseholders in law from crippling bills for historic defects. To assist colleagues with their consideration of the Lords' amendments to the Bill, an overview of amendments tabled during the House of Lords, including the territorial application for each amendment, is annexed.

Making Sure that Industry Pays

As outlined in my letter, I have been clear that those who developed defective buildings or produced and sold dangerous cladding and insulation must pay to fix the problems they created, and that the wider industry must contribute to making buildings safe. To demonstrate our commitment to making sure that developers and manufacturers do the right thing, we laid amendments making it possible for the government to impose a solution in law, should one be needed. We introduced new legal mechanisms that will allow us to distinguish between companies that take responsibility for remedying building safety defects and those companies that do not. These new powers will allow us to prevent those who do not take responsibility from lawfully commencing development of a building for which they have planning permission, and from receiving initial or final building control sign-off on building work.

We have tabled amendments to create in law a new cause of action against construction products manufacturers who mis-sell their products, putting profits before lives. We also

tabled amendments to allow the courts to consider allowing civil cases to be brought against companies associated with a developer for claims in relation to defective buildings, and to consider associated companies when awarding damages to leaseholders. This will make sure that those responsible for defective buildings built using special purpose vehicles and other such legal arrangements can no longer evade responsibility for their actions.

I believe that this strong package of amendments, tabled in the House of Lords, delivers on our commitment to ensure that those who profited, and continue to profit, from the sale of unsafe buildings and construction products take full responsibility now, and in the future, and that industry pays to put things right.

Protecting Leaseholders

The Government has committed to protecting leaseholders from unjust and unaffordable remediation costs. Government amendments tabled in the House of Lords will make sure that liability sits first with developers, freeholders and landlords, and that leaseholders will have the law on their side. Our proposal eradicates the idea that leaseholders should be the first port of call to pay to fix historical building safety defects. We have designed the protections to ensure that those responsible, and otherwise those with the broadest shoulders, will be the first who are required to pay. Where there is no party that clearly should pay in full, and only in this scenario, our approach spreads the costs and ensures above all that the most vulnerable leaseholders are protected. Importantly, any leaseholder contributions for non-cladding defects and interim measures will be subject to a fixed cap. This proposal means that, going forward, most leaseholders will pay less than the cap, and many will pay nothing at all.

Lord Amendments: Response in the Commons

At Lords Report, the government lost three votes on the issue of leaseholder protections. The first amendment reduced the qualifying leaseholder contribution for non-cladding defect remediation to zero, instead of the contribution caps proposed by government, which were £10,000, or £15,000 in Greater London, spread over ten years.

Our original package of measures included legal interventions that provide leaseholders with robust protections; reversing the existing position that leaseholders are the first port of call to fix defects. Those responsible for creating these defects, and those who can afford it, will pay ahead of leaseholders – who will now rightly be protected in law from all cladding costs and be the last resort for contributions to non-cladding costs associated with historical building safety defects.

As I reported in my letter last week, over 35 major developers have already agreed to fix buildings they had a role in developing or remediating, from the past 30 years. This means that many more leaseholders can now expect to pay nothing. Where buildings are still linked to the developer, building owners and landlords will be liable for the costs associated with non-cladding defects, and their leaseholders will pay nothing. Where the building owner or landlord is not linked to the developer but has the wealth to meet the costs in full, their leaseholders will pay nothing. Where the leasehold property is valued at less than £175,000 (or £325,000 in London), the leaseholder will pay nothing. And where the leaseholder has already met interim costs that exceed the contributions cap, they will pay nothing.

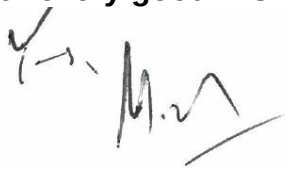
Where none of the protections above apply and the building owner or landlord has no link to the developer who created these defects and cannot afford to meet remediation costs in full, leaseholder contributions towards non-cladding defects can be recovered, subject to the fixed caps. We believe that in these circumstances capped leaseholder contributions will help to make sure the necessary remediation works take place. This will allow banks to lend on properties, reduce leaseholders' insurance premiums and crucially, ensure affected buildings are made safe for all living in them.

The second and third amendments were on the issue of extending leaseholder protections, both to leaseholders in enfranchised and commonhold buildings and to buildings under 11 metres. Peers raised concerns that excluding leaseholders in enfranchised buildings from protections will disadvantage these leaseholders compared to those in blocks with a conventional leaseholder-freeholder relationship. Government has listened to the concerns raised and agrees that this is an issue that needs to be addressed. However, we have excluded enfranchised and commonhold buildings from the protections because, in these circumstances, the building is owned by some or all of the leaseholders. Due to there being no separate freeholder with which costs for remediation can be shared, the amendment introduced by the Lords would not have the intended effect.

In relation to the height of buildings, we are clear that freeholders and landlords should not be commissioning costly remediation in buildings below 11 metres. There is no systemic issue with buildings below 11 metres, which is why Government does not agree with extending the scope of leaseholder protections to include such buildings. Low-rise buildings are very unlikely to need costly remediation to make them safe: assessments following the principles of the new standard, PAS9980, should make clear that lower-cost mitigations such as fire alarms are likely to be more appropriate. I assure you that I will be monitoring this closely, and that my department will not stand by should unscrupulous landlords seek to exploit leaseholders in these buildings. Their card is marked and I encourage you to raise any instances that concern you with my ministerial team.

Finally, the Bill was amended to include a requirement on the new Building Safety Regulator to assess and report on a number of building safety matters within two years, including fire suppression systems, the safety of stairways and ramps, the certification of electrical equipment and systems, and provision for people with disabilities. The Government is happy to accept the principle of this amendment but is bringing forward a revised version of the amendment. Given that HSE will spend much of the first year following Royal Assent developing the Building Safety Regulator as an organisation, we are amending the timeframe to produce these reports to three years, to ensure that the Regulator has the time and space needed to fully consider these important matters.

With every good wish,



RT HON MICHAEL GOVE MP
Secretary of State for Levelling Up, Housing and Communities
and Minister for Intergovernmental Relations

Annex A: Building Safety Bill Amendments

Making sure that Industry Pays

Background

The Secretary of State has invited industry to commit to fix the stock of unsafe buildings they had a role in developing, and to contribute to a fund to ensure that any remaining 11-18 metre buildings are remediated. Should industry fail to do this, Government has taken powers to impose a solution in law to incentivise industry to do the right thing by ensuring that only responsible, safety-focused companies are benefiting from Government support.

This will include, if necessary, implementing measures provided for in the Bill to block developers who have failed to act responsibly from carrying out development for which planning permission has been granted and to prevent developers from obtaining building control approval on their developments, as well as restricting access to government funding.

Measures in the Bill

Clauses 125 and 126 provide for Building Industry Schemes, which will identify those industry actors who are acting responsibly. These clauses make it clear that the purpose of such schemes includes securing remediation of buildings and that the building industry pay the costs associated with remediation. They also provide non-exhaustive examples of the kinds of membership conditions which may apply to members of a scheme, including conditions relating to the remedying of defects in buildings and making financial contributions towards remediation, and a condition that members in a scheme may not use certain construction products made by prescribed manufacturers, for example, cladding and insulation product manufacturers who have failed to make a financial contribution to resolving the current building safety issues. Further detail on how industry schemes will operate including scope, applicable membership conditions and rules of operation will be set out in secondary legislation.

Clauses 127 and 128 give the Secretary of State powers to prevent industry actors who are not acting responsibly from commencing development of new developments for which they have planning permission and prevent those companies from being granted building control sign-off on their developments. The amendments make clear that the prescribed description of persons who may be subject to these prohibitions may include persons eligible to join an industry scheme but who are not members.

These measures will apply to England only.

Expanding the Scope of the Levy

Clause 57 of the Building Safety Bill previously allowed government to impose a levy on applications for building control approval relating to higher-risk buildings.

The Government has now extended the scope of the levy so it can cover all residential buildings and buildings where building control is carried out. If the industry fails to step up and pay to put things right, this is part of the solution that will enable Government to raise funding to ensure leaseholders will not have to pay for remediation of cladding on buildings above 11 metres. This is in line with the Secretary of State's promise that we will impose a solution in law should industry fail to commit to a voluntary agreement to solve the problems.

We have also made a technical amendment to Clause 57 which enables the option for differential charging between those who are eligible for but choose not to sign up to become members of any Building Industry Scheme (Clauses 125 and 126). The intention is that this will encourage developers to sign up to any scheme.

It is our intention to set out the levy rates in secondary legislation following Royal Assent and upon completion of negotiations with industry.

This measure will apply to England only.

Leaseholder protections

Background

At Lords Committee, we tabled our leaseholder protection amendments, and we tabled further amendments at Report. These measures provide protections for leaseholders from exorbitant costs for remediation of their buildings.

Measures in the Bill

Clause 115 – *Remediation of certain defects*

This clause sets out an overview of the leaseholder protections measures.

Clause 116 – *Meaning of "relevant building"*

This clause sets out the types of buildings in scope of the leaseholder protections.

The Government's proposals were to apply the protections to buildings above 11 metres in height, or five storeys, containing at least two dwellings. The Lords have voted to amend this to buildings of any height containing at least two dwellings.

The amendments as tabled set out that the protections did not apply to buildings where the leaseholders have collectively enfranchised, and which are on commonhold land. This is because, in these circumstances, the leaseholders are also the freeholder and so there is no separate party with which costs can be shared. The Lords have voted to amend this, such that the provisions now apply to enfranchised and commonhold buildings.

Clause 117 – *Section 116: height of buildings and number of storeys*

This clause sets out technical detail as to how the height of a building and the number of storeys is to be determined for the purposes of clause 116, consistent with similar provisions elsewhere in the Bill.

Clause 118 – *Meaning of "qualifying lease" and "the qualifying time"*

The clause defines a "qualifying lease" which is eligible for the protections. A lease is qualifying if, on 14 February 2022 (the day the leaseholder protection amendments were tabled for Committee) it was the leaseholder's principal home, or if they owned no more than three properties in the UK in total. The clauses as tabled at Committee provided that the protections applied where up to two UK properties are owned. In response to feedback, the Government increased this to three properties at Report. As before, if a person's principal home always qualifies for the protections, irrespective of how many additional properties they own.

Clause 119 – *Meaning of "relevant defect"*

The clause sets out the types of defects and works to which the protections apply. A relevant defect means a defect that arises as a result of anything done (or not done), or anything used (or not used), in connection with relevant works, that causes a building safety risk. A building safety risk is defined as a risk to the safety of people in or about the building arising from the spread of fire, or the collapse of the building or any part of it. Relevant works are those that were completed in the 30-year period prior to commencement of the provision.

Clause 120 – *Associated persons*

The clause sets out the definition of “associated persons” for the purposes of the leaseholder protections measures. At Report, we further amended the definition of an associated company to include partnerships and limited partnerships. This will ensure that, when determining whether a company controls another (and is thus considered associated), companies who control limited partnerships (and vice versa) are in scope of the provisions.

Clause 121 and Schedule 8 – *Remediation costs under qualifying leases etc*

Clause 121 inserts Schedule 8. The schedule provides that where the landlord is responsible for defects, or can afford to meet the costs in full, they will not be able to pass costs on to leaseholders. Where that does not apply, the amendments spread the costs for non-cladding defects as equitably as possible among all parties with an interest in the building; this includes the freeholder and any other landlords, and contributions from leaseholders.

Paragraph 2 of the schedule sets out that, if the landlord or associate is responsible for the defect, then no service charge is payable by qualifying leaseholders for relevant defects. Responsibility for a defect includes those who were in a joint venture with the developer, and those who undertook or commissioned the work in question.

Paragraph 3 sets out that where the landlord group’s net worth is above £2m per in-scope building, then no service charge is payable by qualifying leaseholders for relevant defects. This provision does not apply to private registered providers of social housing or local authorities.

Paragraph 4 sets out that no service charge is payable in respect of relevant defects where the value of the lease is below a certain value; the values being £175,000, or £325,000 in Greater London. This is to ensure that those leaseholders who are least likely to be able to afford to make a contribution to remediation are protected from all costs.

Paragraph 5 sets out that payments made in respect of relevant defects in the five years prior to commencement are to be counted towards any capped contribution from leaseholders.

Paragraph 6 makes provision for the permitted maximum costs that leaseholders can be charged in respect of relevant defects. The Government’s proposals were for these caps to be set at £10,000 outside London and £15,000 in Greater London for non-cladding defect costs, except where the property is worth over £1m or £2m, where they would be set at £50,000 and £100,000 respectively. For shared owners, the permitted maximum would have been scaled on proportion to the tenant’s share of what would otherwise be the permitted maximum (for example, a 50% shared owner of a flat in London would have a cap of £7,500). The Lords have voted to amend this approach such that the permitted maximum is zero for all qualifying leases.

Paragraph 7 sets out that there is an annual limit on service charges, so that leaseholder contributions are spread over a ten-year period. At Report this was extended from the five years originally proposed.

Paragraph 8 sets out that no service charge is payable under a qualifying lease in respect of cladding remediation.

Paragraph 9 sets out that no service charge is payable for legal or professional services relating to liability for relevant defects.

Paragraph 12 provides a power for the Secretary of State to set out apportionment of remaining remediation costs in secondary legislation. This will determine who will be required to pay any amount that is not recoverable from leaseholders and how much they will pay.

Paragraph 10 sets out supplementary provision, and paragraph 13 provides that there is to be no increase in service charge for other leaseholders due to these provisions.

Paragraphs 13 to 17 relate to the provision of information between landlords and leaseholders.

Paragraph 18 sets out anti-avoidance provision.

Clause 122 – *Remediation orders*

The clause gives powers to the First-tier Tribunal to make a remediation order on the application of an interested person (including enforcement authorities and leaseholders). The order will set out the remediation work to be carried out and the specified time by which a landlord needs to rectify the historical safety defects in the building.

Clause 123 – *Remediation contribution orders*

This clause gives powers to the First-tier Tribunal to make a remediation contribution order on the application of an interested person (including enforcement authorities and leaseholders) if it considers it just and equitable to do so. The order may set out the monetary amount and the specified time by which an associated company needs to make payment to the landlord to remedy the historical safety defects in the building.

We further revised this provision at Report Stage to allow for a remediation contribution order to be made against a developer, partnerships and limited liability partnerships and former landlords (as at 14 February 2022). The order cannot be used by a leaseholder against a resident management company, but a resident management company (who owns the freehold) can apply for an order against a developer.

Clause 124 - *Meeting the costs of insolvent landlord*

This clause gives powers to the court, if it considers it just and equitable to do so, to make an order requiring an associated company to make contributions to remedy any outstanding historical safety defects in the building following an application made by the insolvency practitioner in the winding up of a company.

These measures will apply to England only.

Extending the reach of civil building safety liability

Background

Concerns have been raised by a range of groups, including small and medium sized businesses, leaseholders and Parliamentarians, about the consequences of a common practice used for property development where a subsidiary company, often thinly capitalised, is set up within a wider corporate group to own and manage a specific development and then wound up once the development is completed. Such companies are often referred to as "Special Purpose Vehicles".

There can be sound business practice behind this use of company structuring; for example, it can be employed to secure investment in a project. However, a consequence is that it leaves the broader developer group with no long-term civil liability for the work in which they were involved.

This can leave those affected by poor design and/or construction with either no one against which they can make a claim as the subsidiary no longer exists, or unable to secure any award by the courts for a successful claim, as the subsidiary company is thinly capitalised and, therefore, has nothing it can use to pay its debt.

Measures in the Bill

Clauses 129 to 132 create a new power for the High Court to make 'building liability orders' to help those affected find fair redress for building safety issues. The High Court will be able to extend a liability from an original company to its associated companies, even when the original company no longer exists.

This forms part of a broader system created by other changes to the Building Safety Bill. Specifically, it creates a further route for landlords, buildings owners and regulators to seek redress to meet remediation costs. Developers who have a successful claim brought against them and can show that the fault lies with construction product manufacturers, will be able to use the new causes of action to seek recompense from them, alongside the measures outlined below.

These amendments will apply to England and Wales.

Construction Products – strengthening redress

Background

To date construction product manufacturers have not had to face any direct repercussions for their role in the creation of building safety defects. The changes made to the Bill will strengthen redress by creating new routes for recovering cost contributions from manufacturers and sellers of construction products where homes have been made unfit for habitation through the use of defective, or mis-sold construction products, or for a breach of construction product regulations. This action will provide additional routes to redress for building owners and landlords, as well as homeowners and leaseholders.

Measures in the Bill

Clauses 146 to 150 introduce a new cause of action that enables claims for compensation to be sought from manufacturers or sellers of defective or mis-sold construction products, or those in breach of construction product regulations at the time.

The cause of action will allow anyone with a legal or equitable interest in a dwelling, or the equivalent in Scotland, (or in a building containing one or more dwellings) to bring a civil claim against construction product manufacturers and/or sellers who are directly responsible for a construction product used in the original construction, or any subsequent works, causing or contributing to a dwelling being unfit for habitation, where that product was defective, mis-sold, or in breach of regulations in place at the time. This provision will be prospective, applying to works completed after commencement up until new regulations are made under the powers in Schedule 11, and subject to a 15-year limitation period.

The cause of action will apply retrospectively in respect of cladding products and will apply where the product was mis-sold, inherently defective or in breach of construction product regulations in place at the relevant time. The limitation period will be 30 years retrospectively, applying to issues that arose before the commencement date (which will be two months after Royal Assent of the Building Safety Bill).

The cause of action will apply prospectively (for actions which arise after commencement) with a limitation period of 15 years, once regulations have been laid under the powers contained in Schedule 11 in respect of all construction products in breach of construction product regulations in place at the relevant time.

The amendment will apply to England, Scotland and Wales. We have also taken powers to extend this new cause of action to Northern Ireland.

Clauses 151 to 154 create a power to make regulations to compel construction products manufacturers, their authorised representatives, importers, and distributors (‘economic operators’) to contribute towards the cost of remediation works where they have caused or contributed to dwellings being unfit for habitation.

Regulations will enable the Secretary of State to serve a costs contribution notice on an economic operator following successful prosecution for non-compliance with construction products regulations. The regulations will allow the Secretary of State to appoint an independent person to inspect identified residential buildings where the relevant product has been used, and consider whether the building is unfit for habitation, the extent to which this is due to the product having been used, the remediation works required, an estimate as to their cost, and the amount that the economic operator should be required to pay and to whom.

The Secretary of State may then serve a costs contribution notice on the economic operator, specifying the amount that they will be required to pay towards the cost of remediation works. The notice may also require them to contribute to the cost of building assessments carried out as part of this process. Regulations will set out a process for a review of the decision to serve the notice, and a statutory right of appeal against the decision to a Court.

The Secretary of State will also be able to apply to a court for a costs contribution order to be made against an economic operator. The grounds on which the Secretary of State can make applications would be the same as those for serving a costs contribution notice. The Secretary of State would have the power to apply to the court for the order to be enforced if an economic operator does not comply.

This measure will apply UK wide.

Strengthening Redress in relation to New Build Homes

Clauses 143 and 144 require all developers to provide a new build home warranty for all new build, or existing properties that have building work done that creates a new dwelling, prior to sale. This provision mandates the requirement for a warranty in law for the first time. Such a warranty must satisfy requirements imposed in regulations made under this power which will include a requirement which extends current usual warranty provision from 10 years to 15 years.

Alongside this, powers will also enable the Government to set in regulations minimum parameters and standards for what must be included in each warranty, who will benefit from the warranty and provide an ability to transfer the benefit of the warranty (e.g., where the property is sold during the warranty period); set the minimum period for which the developer will remain liable for fixing any problems with the property before the insurance period commences; and introduce a monetary penalty for any developer failing to comply by not providing the required new build home warranty.

These measures will provide greater protection for all new homeowners by providing peace of mind that they hold a warranty for 15 years. This will mirror changes we are making in the prospective limitation period for action under the Defective Premises Act 1972.

Homeowners will be able to make a claim under their warranty for defects arising from its build or conversion. Proposed regulations will provide that such defects will include those arising from poor materials or poor workmanship. As such, this provision may be an alternative to costly and lengthy court proceedings that arise from pursuing a claim under the Defective Premises Act 1972. In addition, these changes will result in developers being responsible for fixing any problems arising from their work for longer. Mandating minimum standards will ensure that warranties offer a greater and guaranteed level of protection.

This amendment will apply to England only.

Building Safety Charge

Background

Previously, the ongoing costs of the new regime were to be charged via a standalone Building Safety Charge.

Measures in the Bill

The Bill has been amended so that the building safety costs are identifiable part of the service charge. This will keep costs transparent while allowing them to operate as part of the service charge system which is familiar to both landlords and leaseholders.

This will simplify how the costs of the new regime are managed. The service charge regime is well established, and this amendment reduces the bureaucracy of an entirely separate charging mechanism for building owners and leaseholders. The amendment will respond to the feedback from stakeholders and from Parliamentarians.

This amendment will apply to England only.

Removal of the Building Safety Manager

We have removed the clauses placing a duty on the Principal Accountable Person to appoint a Building Safety Manager, and those relating to the exception to the duty.

The decision follows further reflection on the prescription of the Building Safety Manager role and our commitment to ensuring a proportionate regime. We have worked closely with stakeholders to address concerns raised and have listened to feedback that requiring the appointment of a new Building Safety Manager could create an unnecessary burden and duplication of costs to leaseholders.

Meeting the obligations set out in the Building Safety Bill is the responsibility of Accountable Persons, and it is up to Accountable Persons to determine how best to meet the duties and what arrangement they require.

This change will ensure that the regime is flexible and enables Accountable Persons to set their own arrangements in a way that is most appropriate for their building and residents. This could include upskilling existing staff or agents, and only where necessary hiring additional competent people or organisations, including competent building safety managers, if they wish to. This approach will deliver safety without the risk of introducing undue and unnecessary costs, which may ultimately be passed on to leaseholders.

We are committed to driving up standards of safety management and maintenance in high-rise buildings, and the competence of those who deliver it. Where an Accountable Person’s existing management arrangements deliver safe outcomes for residents, and this can be demonstrated to the Building Safety Regulator, their mode of delivery will not need to change.

This amendment will apply to England only.

Strengthening the Voice of Residents

A strong voice for disabled residents

We have strengthened clauses in Part 2 of the Bill to provide additional reassurance about the Government and the Health and Safety Executive's commitment to ensuring that the voices of disabled residents are heard in the new regulatory regime. These amendments ensure that the Building Safety Regulator will have to pay particular attention to the safety of disabled people in high-rise residential buildings. This includes a duty to take all reasonable steps to secure disabled representation on its residents' panel, and publicly reporting on its engagement with disabled residents of high-rise residential buildings.

Residents' Engagement Strategy

We have amended the provisions in Clause 90 in the Bill to provide that Principal Accountable Persons have an obligation to carry out any commitments made within the Residents' Engagement Strategy that they have produced. We are also amending clause 90 so that residents (and other prescribed persons) are consulted on the strategy (in prescribed circumstances) and their views taken into account.

These changes also include regulation making powers that allow for further provisions about the Residents' Engagement Strategy and its preparation and also additional requirements on Principal Accountable Persons as regards consultation.

The changes create an enforceable obligation on the Principal Accountable Person to carry out any commitments that they have made in the Residents' Engagement Strategy. This means that residents and the Building Safety Regulator will be able to hold Principal Accountable Persons to account for their commitments made in the Residents' Engagement Strategy.

They ensure that residents have the opportunity to comment on the form of the Residents' Engagement Strategy and that those responsible for the safety of the building to listen to such comments. Regulations will be used to set out the circumstances in which consultation must be carried out, anticipated to be after the first draft of the strategy is prepared and following any significant changes. Government will consult on these regulations later this year.

Accountable Persons will also have a role to play and how they will work with Principal Accountable Persons in respect of the Residents' Engagement Strategy will be set out in regulations. The Government will likewise consult on these regulations later this year.

These amendments will apply to England only.

Professional directors

Following concerns raised during Lords Committee consideration, we have amended the Bill to add clause 110, which will enable resident-led organisations to appoint a professional director to support them in meeting their building safety duties. This includes powers to set out provisions in relation to the appointment, removal and renumeration of such directors in

secondary legislation, and an amendment to allow for the cost of the appointment to be recovered through service charges.

Accountability for building safety duties will remain with the resident-led company, but these changes will provide that where a professional director has been appointed then resident-directors should not be personally liable for any breaches that may occur.

This amendment will apply to England only.

Approved Inspectors: Requirement for Insurance

Clause 47 has been amended to give the Approved Inspector (AI) sector greater flexibility in the face of insurance market fluctuations. It now removes the requirement in the Building Act 1984 for AIs to hold insurance through a Government-approved scheme. Instead, AIs will be required to adequately cover their own liabilities, including through insurance if necessary. The Building Safety Regulator is already set to be given powers in the Bill to sanction any AI who fails to meet standards set out by the professional conduct rules, which may include requirements on insurance.

This amendment will apply to England and Wales.

Building Control Bodies – proactive inspections

We amended Clause 41 to add a further oversight of building control bodies provision to the Building Act 1984. This provides the Building Safety Regulator with a power to conduct 'inspections' of building control bodies.

It is the Government's intent to create a robust system for the oversight of building control by the Building Safety Regulator. This clause adds to the system created by the provisions in new Part 2A, allowing the Building Safety Regulator to collect and analyse performance information, conduct inspections to verify the information it has received from building control bodies, and to proactively inspect to ensure ongoing efficiency and effectiveness of local authorities and registered building control approvers in exercising their building control functions.

This amendment will apply to England and Wales.

Information sharing between the regulator and Welsh Ministers relating to the building control profession

Some approved inspectors operate in both England and Wales, and we anticipate that future Registered Building Control Approvers (RBCAs) may do the same. It is therefore foreseeable that the regulatory authority in one nation may investigate a cross-border RBCA and find breaches of the professional conduct or operational standards rules which may indicate the possibility of similar breaches in the other nation.

Following ongoing liaison with the Welsh Government, we have amended clause 41 to create information sharing gateways between the regulatory authorities of the building control professions in England and Wales. This will allow information and intelligence gleaned by one regulatory authority to be passed on to the other, where relevant.

This amendment will apply to England and Wales.

Delegated powers in Clause 12

Following debate on Clause 12 at Committee Stage and the report of the Delegated Powers and Regulatory Reform Committee, we wanted to provide further assurance about the use of the delegated power in Clause 12 to repeal Building Safety Regulator committee provisions through affirmative regulations.

This provision was included in the Bill on the strong advice of the Health and Safety Executive to enable it to adapt and improve its committee structure over time. We amended the Bill so that regulations to repeal committee provisions can only be put before Parliament by Ministers at the initiative and following the independent recommendation of the Building Safety Regulator, and not at the initiative of Ministers.

This amendment will apply to England only.

Construction Products - Statutory Instrument Procedure

Following a recommendation made by the Delegated Powers and Regulatory Reform Committee, we amended the Bill so that any regulations under Schedule 11 that would remove a construction product from the safety-critical list would need to be made using the affirmative procedure.

This amendment will apply UK wide.

Construction Products - General and Supplementary

Following a request from the Scottish Government, and to be consistent for Northern Ireland, we amended the bill to secure that the maximum fine that can be imposed under the regulations for an offence in Scotland or Northern Ireland is the statutory maximum (this is not relevant for England and Wales).

This amendment will apply to Scotland and Northern Ireland.

New Homes Ombudsman

We have amended the provisions related to the New Homes Ombudsman (clauses 135 to 142) to extend the application of these provisions Northern Ireland. We have also clarified the definitions in relation to what is defined as a “new build home” and who is defined as a “developer”.

This is to clarify the existing policy intent that extensions to existing residential buildings to create new homes would also fall under the New Homes Ombudsman's remit. Without these technical amendments there may be ambiguity as to whether extensions to existing residential buildings to create new homes fall within these definitions.

This amendment will apply UK wide.

Application to the Crown and Parliament

When the Bill was introduced, Parts 2 and 4 applied to the Crown. The Government did not initially apply Part 3, which amends the Building Act 1984 to set requirements for the design and construction of in scope buildings, because there is an existing, un-commenced power in the Building Act to enable building regulations to be applied to Crown buildings and Crown bodies. We have now amended the Bill in Clause 58 to apply the Building Act and building regulations to the Crown.

This amendment will apply to England and Wales.

Clause 59 ensures the Building Act and building regulations apply correctly to work on the Palace of Westminster and other buildings on the Parliamentary Estate. Because of uncertainty as to whether the Palace might fall within the proposed ‘day one’ scope, the Palace was originally excluded from Part 4 of the Bill. We are now advised that the Palace and other Parliamentary buildings are not in proposed ‘day one’ scope, so the exclusion is unnecessary and has been removed.

This amendment will apply to England only.

Minor and Technical Amendments

In addition to the specific issues listed in this Annex, the Government has also made a number of minor and technical amendments, corrections and drafting changes. In all cases explanatory notes have been provided.