



# Building Safety Act 2022

## 2022 CHAPTER 30

### PART 5

#### OTHER PROVISION ABOUT SAFETY, STANDARDS ETC

##### *New homes ombudsman scheme*

#### **136 Establishment of the new homes ombudsman scheme**

- (1) The Secretary of State must make arrangements for there to be a scheme, to be known as the “new homes ombudsman scheme”, which meets the conditions in section 137(1).
- (2) Examples of arrangements under [subsection \(1\)](#) are arrangements—
  - (a) with another person under which that other person agrees to establish and maintain the new homes ombudsman scheme in accordance with the terms of the arrangements,
  - (b) under which the new homes ombudsman scheme is established and maintained by (or on behalf of) the Secretary of State, or
  - (c) for the maintenance of the new homes ombudsman scheme, in accordance with the terms of the arrangements, by a person other than the person who established it.
- (3) The Secretary of State may—
  - (a) give financial assistance (by way of grant, loan, guarantee or in any other form) to a person for the establishment or maintenance of the new homes ombudsman scheme;
  - (b) make payments to such a person (otherwise than as financial assistance) in accordance with arrangements under [subsection \(1\)](#).
- (4) Before making arrangements under subsection (1), the Secretary of State must consult—
  - (a) the Welsh Ministers,

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- (b) the Scottish Ministers, and
  - (c) the relevant Northern Ireland department.
- (5) In this section, “the relevant Northern Ireland department” means—
- (a) the Northern Ireland department designated for the purposes of this section by the First Minister and deputy First Minister acting jointly, or
  - (b) failing such a designation, the Executive Office in Northern Ireland.

### **137 The new homes ombudsman scheme**

- (1) The conditions referred to in section 136(1) are that—
- (a) membership of the scheme is open to all developers,
  - (b) the scheme enables qualifying complainants to have complaints against members of the scheme investigated and determined by an independent individual, and
  - (c) the scheme contains the provisions required by [Schedule 9](#).
- (2) A “qualifying complainant” is a person who, at the time the complaint is made, is a relevant owner of a home which, at that time, is a new build home.
- (3) The individual who is to investigate and determine complaints under the scheme is to be known as “the new homes ombudsman”.
- (4) The scheme may also include provision for persons other than qualifying complainants to have complaints against members of the scheme investigated and determined under the scheme.
- (5) The scheme may provide that the new homes ombudsman is not required to investigate a complaint if the new homes ombudsman is satisfied that the complaint (or a complaint which is materially the same) is being, or has been, dealt with under another redress scheme or in legal proceedings.
- (6) In this section, “redress scheme” means a scheme under which complaints may be made to, and investigated and determined by, an independent person.
- (7) [Schedule 9](#) contains further provision about the new homes ombudsman scheme.
- (8) [Schedule 10](#) contains amendments connected with the establishment of the new homes ombudsman scheme.

### **138 “Relevant owner”, “new build home” and “developer”**

- (1) This section provides for the meaning of terms used in section 137 (and in this section).
- (2) A person is a “relevant owner” of a home if the person—
- (a) is an individual,
  - (b) has a relevant interest in land that includes the home, and
  - (c) meets the occupation condition.
- (3) A person meets the occupation condition if the person—
- (a) occupies the home, or
  - (b) is the landlord under a lease of land that includes the home granted for a term not exceeding 21 years to another individual for that individual’s occupation of the home.

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- (4) In relation to a home in Scotland or Northern Ireland, subsection (3) has effect as if in paragraph (b) the words “for a term not exceeding 21 years” were omitted.
- (5) A home is a “new build home” if—
- (a) the home is, or is contained in—
    - (i) a building the construction of which began after the coming into force of this section, or
    - (ii) a building that has been converted, or to which any other works have been carried out, so that it consists of or contains the home, where the conversion or works began after the coming into force of this section,
  - (b) there is a person who is, or was, a developer in relation to the home, and
  - (c) no more than two years have elapsed since the first acquisition, by any person, of a relevant interest in land that includes the home from the person mentioned in [paragraph \(b\)](#).
- (6) “Relevant interest” means—
- (a) in relation to land in England or Wales, a legal estate which is—
    - (i) an estate in fee simple absolute in possession, or
    - (ii) a term of years absolute granted for a term of more than 21 years from the date of the grant;
  - (b) in relation to land in Scotland, the interest of an owner of land;
  - (c) in relation to land in Northern Ireland, a legal estate which is—
    - (i) an estate in fee simple absolute in possession,
    - (ii) an estate in fee simple in possession subject to a rent payable under a fee farm grant, or
    - (iii) a term of years absolute granted for a term of more than 21 years from the date of the grant.
- (7) A “developer” is a person—
- (a) who undertakes or commissions—
    - (i) the construction of a new building that is to consist of or contain a home,
    - (ii) the conversion of, or carrying out of any other works to, an existing building so that it consists of or contains a home, or
    - (iii) the conversion of, or carrying out of any other works to, an existing building so as to alter the number of homes contained in it,with a view to granting, or disposing of, a relevant interest in land that includes the home or, in a case falling within [sub-paragraph \(iii\)](#), any of the homes, or
  - (b) who is of a description specified in regulations made by the relevant national authority.
- (8) Regulations under [subsection \(7\)\(b\)](#) may, among other things, specify a description of persons by reference to a connection with a person mentioned in [subsection \(7\)\(a\)](#).
- (9) In [subsection \(7\)\(b\)](#), “the relevant national authority” means—
- (a) in relation to homes in England, the Secretary of State,
  - (b) in relation to homes in Wales, the Welsh Ministers,
  - (c) in relation to homes in Scotland, the Scottish Ministers, and

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- (d) in relation to homes in Northern Ireland, the Northern Ireland department designated for the purposes of this section by the First Minister and deputy First Minister acting jointly.
- (10) Before making regulations under [subsection \(7\)\(b\)](#), the relevant national authority must consult each other person who is the relevant national authority in relation to regulations under that subsection.
- (11) If no Northern Ireland department has been designated for the purposes of this section then, for the purposes of subsection (10), “the relevant national authority” in relation to homes in Northern Ireland is the Executive Office in Northern Ireland.
- (12) “Home” means a private residence.
- (13) “Occupies” means occupies as a private residence (and “occupation” is to be construed accordingly).

### **139 Regulations under section 138**

- (1) The power to make regulations under section 138(7)(b) is exercisable—
  - (a) in the case of regulations made by the Secretary of State or the Welsh Ministers, by statutory instrument, and
  - (b) in the case of regulations made by a Northern Ireland department, by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

(For regulations under section 138(7)(b) made by the Scottish Ministers, see section 27 of the [Interpretation and Legislative Reform \(Scotland\) Act 2010 \(asp 10\)](#)).
- (2) Regulations under section 138(7)(b)—
  - (a) may make different provision for different purposes;
  - (b) may contain consequential, supplementary, incidental, transitional or saving provision.
- (3) Regulations under section 138(7)(b)—
  - (a) if made by the Secretary of State, may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament;
  - (b) if made by the Welsh Ministers, may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, Senedd Cymru;
  - (c) if made by the Scottish Ministers, are subject to the affirmative procedure (see section 29 of the [Interpretation and Legislative Reform \(Scotland\) Act 2010 \(asp 10\)](#));
  - (d) if made by a Northern Ireland department, may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.

### **140 Power to require persons to join scheme and to provide information**

- (1) The Secretary of State may by regulations—
  - (a) require persons who are developers, or developers of a specified description, to become members of the new homes ombudsman scheme;

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- (b) require persons who are required to become members of the scheme under [paragraph \(a\)](#) to remain members of the scheme for a period specified in the regulations (even if they are no longer developers);
- (c) require members of the scheme to inform persons of a specified description of the scheme;
- (d) make provision for civil sanctions to be imposed in respect of a breach of a requirement imposed by regulations under [paragraph \(a\)](#), [\(b\)](#) or [\(c\)](#);
- (e) make provision for the investigation of suspected breaches of such a requirement.

In [this subsection](#), “developer” has the meaning given in section 138 and “specified” means specified in the regulations.

- (2) Before making regulations under subsection (1), the Secretary of State must consult—
  - (a) the Welsh Ministers,
  - (b) the Scottish Ministers, and
  - (c) the relevant Northern Ireland department.
- (3) Provision made by virtue of [subsection \(1\)\(a\)](#) may provide for exceptions to the requirement to become a member of the scheme.
- (4) Provision made by virtue of [subsection \(1\)\(a\)](#) or [\(b\)](#) may require persons who are members of the new homes ombudsman scheme to—
  - (a) obtain a certificate confirming their membership of the scheme;
  - (b) display or publish the certificate in accordance with the regulations;
  - (c) produce a copy of the certificate, on request, in accordance with the regulations.
- (5) Provision made for the imposition of a civil sanction by virtue of [subsection \(1\)\(d\)](#) must include—
  - (a) provision for appeals to a court or tribunal against the imposition of the sanction, and
  - (b) such other provision as the Secretary of State considers appropriate for safeguarding the interests of persons on whom the sanction may be imposed.
- (6) Provision made by virtue of [subsection \(1\)\(d\)](#) or [\(e\)](#) may—
  - (a) confer functions on a person (including functions involving the exercise of a discretion);
  - (b) require a person on whom functions are so conferred to have regard to any relevant guidance issued by the Secretary of State relating to the exercise of those functions.
- (7) The Secretary of State may make payments to a person on whom functions are conferred by virtue of [subsection \(6\)](#).
- (8) In this section, “the relevant Northern Ireland department” means—
  - (a) the Northern Ireland department designated for the purposes of this section by the First Minister and deputy First Minister acting jointly, or
  - (b) failing such a designation, the Executive Office in Northern Ireland.

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#### **141 Register of members**

- (1) The person who maintains the new homes ombudsman scheme must keep a register of persons who are members of the scheme.
- (2) The register must be made available for inspection by members of the public at all reasonable times.

#### **142 Developers' code of practice**

- (1) The Secretary of State may issue or approve a code of practice about the standards of conduct and standards of quality of work expected of members of the new homes ombudsman scheme.
- (2) The Secretary of State may from time to time revise or replace the code or approve its revision or replacement.
- (3) The Secretary of State must ensure that the current version of the code is published.
- (4) The Secretary of State must consult the Welsh Ministers, the Scottish Ministers and the relevant Northern Ireland department before—
  - (a) issuing, revising or replacing the code, or
  - (b) approving the code or a revision or replacement of it.
- (5) In this section, “the relevant Northern Ireland department” means—
  - (a) the Northern Ireland department designated for the purposes of this section by the First Minister and deputy First Minister acting jointly, or
  - (b) failing such a designation, the Executive Office in Northern Ireland.

#### **143 Amendment of the Government of Wales Act 2006**

In Schedule 7B to the Government of Wales Act 2006 (general restrictions on legislative competence of Senedd Cymru), in paragraph 10(2), at the end insert—  
“(o) the new homes ombudsman.”