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EXPLANATORY NOTES—BUILDING SAFETY ACT 2022

EXPLANATORY NOTES

Building Safety Act 2022

Chapter 30

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BUILDING SAFETY ACT 2022

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Building Safety Act 2022 which received Royal Assent on 28 April 2022 (c. 30).

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

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These Explanatory Notes relate to the Building Safety Act 2022 which received Royal Assent on 28 April 2022 (c. 30)

Overview of the Act

1 The Building Safety Act takes forward the Government's commitment to fundamental reform of the building safety system. The Act 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 Act also acts as the vehicle for wider improvements including changes to the Architects Act 1997, the Housing Act 1996, and provisions to establish a National Regulator for Construction Products and a New Homes Ombudsman. And it takes forward further changes to the Regulatory Reform (Fire Safety) Order 2005 (the Fire Safety Order or FSO), building on the Fire Safety Act 2021.

3 The objectives of the Act 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. This involves:

- establishing a new Building Safety Regulator in England to oversee a 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, and establishing additional protections for leaseholders in relation to financing remediation works;
- increasing access to redress through the Defective Premises Act 1972;
- driving industry culture change and incentivising compliance;
- strengthening the Fire Safety Order; and
- providing a stronger and clearer framework for national oversight of construction products.

5 Part 1 provides an overview of the Act. The Act contains six parts and eleven Schedules addressing a range of issues relating to building safety and standards. The Act makes a number of changes to existing legislation, most notably the Building Act 1984.

6 Part 2 establishes a new Building Safety Regulator within the Health and Safety Executive.

7 Part 3 deals with amendments to the Building Act 1984 as it applies to England and Wales, and defines the scope and provisions for the regime during the design and construction phase for higher-risk buildings. It also provides for the registration of building inspectors and building control approvers to better regulate and improve competence levels in the building control sector.

8 Part 4 is concerned with higher-risk residential buildings in England when they are occupied, and defines the scope of the regime for higher-risk buildings in occupation. It defines and places duties on the Accountable Person (the dutyholder in occupation) in relation to building safety risks in their building.

9 Part 5 details other provisions, including provisions relating to service charges, remediation and redress, and changes to the Fire Safety Order. It includes provisions to require a New Homes Ombudsman scheme to be established, and powers to make provision for regulation of construction products for the UK. It allows disciplinary orders made against architects by the Professional Conduct Committee 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 wishing to escalate a complaint to the Housing Ombudsman to do this via a "designated person" or wait eight weeks.

10 Part 6 contains the technical sections related to the Act, including Crown application and provision for liability of officers.

Policy background

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.

12 Following the fire, the Government commissioned the Independent Review of Building Regulations and Fire Safety, led by Dame Judith Hackitt. Dame Judith's final report, Building a Safer Future[1], 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;

[1]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707785/Building_a_Safer_Future_-_web.pdf

- put residents at the heart of a new system of building safety regulation, 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 findings and recommendations of the Independent Review.

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[2], published on 6 June 2019.

15 The Government's response to the consultation was published on 2 April 2020[3] and a draft version of the Act was published for pre-legislative scrutiny on 20 July 2020[4]. The HCLG Committee reported on 24 November 2020[5] and Government responded on 26 May 2021[6].

16 The Welsh Government asked the UK Government to make a number of changes to the Building Act 1984 on their behalf. These will allow the Welsh Government to use the Building Act to implement a regime for design and construction that is appropriate for Wales, while bringing forward primary legislation through Senedd Cymru in relation to wider proposals, particularly those relating to the occupation phase. The Welsh Government has published a white paper, "Safer buildings in Wales"[7], which sets out proposals for comprehensive reform of legislation that contributes to building safety in Wales, including how this Act is intended to apply to Wales.

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[2] https://www.gov.uk/government/consultations/building-a-safer-future-proposals-for-reform-of-the-building-safety-regulatory-system

[3] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877628/A_reformed_building_safety_regulatory_system_-_gvt_response_to_the_Building_a_Safer_Future_consultation.pdf

[4] https://www.gov.uk/government/publications/draft-building-safety-Act

[5] https://publications.parliament.uk/pa/cm5801/cmselect/cmcomloc/466/46602.htm

[6] https://www.gov.uk/government/publications/building-safety-Act-government-response-to-pre-legislative-scrutiny-by-the-select-committee

[7] https://gov.wales/safer-buildings-wales

17 The Welsh Government has provided further detail on their intentions in relation to individual sections, where relevant, in the "commentary on provisions" section. The intention is that the regulation and oversight of the design, construction and refurbishment of higher-risk buildings and the building control system in Wales will be addressed through the extension of local authority and Welsh Minister functions. For example, the building control authority for higher-risk buildings will be a local authority, and Welsh Ministers or their delegated body will be responsible for the registration and regulation of registered building control inspectors and registered building control approvers in Wales.

18 Alongside the new building safety regime, this Act amends provisions within the Fire Safety Order which applies to all non-domestic premises in England and Wales. As part of the Government's response to the Independent Review, the Home Office issued a Call for Evidence on the Fire Safety Order in 2019, which informed the legislative proposals outlined in the Fire Safety Consultation in 2020 to strengthen the Fire Safety Order and implement recommendations from the Grenfell Tower Inquiry Phase 1 report requiring changes in the law. The Government's response to the consultation was published on 17 March 2021.

19 The amendments to the Fire Safety Order build on the Fire Safety Act 2021, which clarifies that the FSO applies to the structure, external walls and flat entrance doors in buildings containing two or more sets of domestic premises. The amendments require that all Responsible Persons (RPs) must record their fire risk assessments; must not appoint a person to assist them with undertaking a fire risk assessment unless that person is competent; must provide specific, comprehensible and relevant information about fire safety matters to residents of buildings containing two or more sets of domestic premises, and must keep records of this information; must take such steps as are reasonably practicable to identify other RPs in the same premises, inform each other of their name and United Kingdom address and of the parts of the premises for which they consider themselves to be an RP and to record that information; that a departing RP must provide specific fire safety information to incoming RPs; and, for higher-risk buildings including a domestic dwelling, must identify and co-operate with Accountable Persons (as defined in the Building Safety Act) in the same premises. In addition, the Act increases financial penalties for three specific criminal offences under the FSO and expressly provides that compliance or non-compliance with guidance issued in accordance with Article 50 of the FSO may be relied upon by the Court as supporting compliance with or breach of the Order. The Welsh Government have expressed their consent for these amendments where relevant to extend to Wales.

20 The following provides an overview of the proposals within the Act. This explanation is not organised in the same way as the provisions in the Act itself (see the "Overview of the Act" section for a summary of provisions as they are ordered in the Act). Detailed, section-by-section explanations of all of the Act's measures are provided in the "commentary on provisions" section.

The Building Safety Regulator

Functions of the Building Safety Regulator

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

22 The Building Safety Regulator has two objectives focused on securing the safety of people in and around buildings, and improving building standards. It will also regulate in line with best practice principles including being proportionate, transparent, and targeting its activity at cases where action is needed.

23 The Building Safety Regulator has three core functions. These are:

- Implementing the new, more stringent regulatory regime for higher-risk buildings. This means being the building control authority in England in respect of building work on higher-risk buildings and overseeing and enforcing the new regime in occupation for higher-risk buildings. 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 Fire and Rescue Services, and local authority expertise (notably Local Authority Building Control teams) to assist it in making regulatory decisions.
- Overseeing the safety and performance of all buildings. This has two key aspects:
    - Overseeing the performance of the building control sector. This will involve developing key performance indicators (KPIs) related to building control work, data collection and powers 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 and commissioning advice on risks in and standards of buildings.
- 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 and publishing non-statutory advice and guidance.

- 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).

24 As the regulator leading delivery of the more stringent regulatory 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.

25 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 Fire and Rescue Services and local authority expertise (notably Local Authority Building Control teams) to assist in making major regulatory decisions.

Committees

26 To assist in carrying out its functions, the Act provides the Building Safety Regulator with the power to establish and maintain committees to advise on building functions. The Act also provides the Building Safety Regulator with 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, and provide oversight of industry's work to improve competence.
- **Residents' panel**. This committee will consist of higher-risk building residents and other relevant persons (if any) that the Building Safety Regulator considers appropriate. The Building Safety Regulator will consult this committee on certain matters which it is expected would be of particular interest and importance for residents of higher-risk buildings.

A more stringent regime for higher-risk buildings

27 One of the Building Safety Regulator's three functions is to implement a more stringent regime for higher-risk buildings.

28 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 in England.

29 The Act 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 research or on the basis of independent evidence and advice from the Building Safety Regulator.

Higher-risk buildings in design and construction

Dutyholders

30 The Act 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 intended to provide an overall explanation of how the Government intends to use the powers in this Act in England.

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. Role is 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. Role is 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 Act also confers power to introduce general duties in relation to planning and managing work to which building regulations are applicable, to ensure compliance with the requirements of building regulations. 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 Act provides powers to impose competence requirements on the Principal Designer and Principal Contractor, and other persons, and to impose duties on persons making appointments in relation to building regulations to ensure that those they appoint 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 will be provided to support these requirements.

36 For higher-risk buildings, the Act provides powers to prescribe documents to be supplied with building control applications, which the Government proposes to use to require 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 Act, coupled with existing powers both in the Building Act 1984 and in other legislation, will allow for the creation of a new Gateway regime. This will ensure that building safety risks are considered at each stage of a new higher-risk building's design and construction.

38 The new Building Safety Regulator will oversee the building work and ensure appropriate measures are being implemented to manage compliance. Building work carried out in existing higher-risk buildings will also be overseen by the new Building Safety Regulator. This will either involve building control applications with plans and prescribed documents proportionate to the proposed refurbishment being submitted to the Building Safety Regulator, or by work being carried out under the Competent Person Scheme and being notified to the Building Safety Regulator. This is however separate to the Gateways process.

39 Gateways policy will be implemented through statutory instruments in England, 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 introduces a number of new requirements in the planning system by amendments to the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). These ensure that fire safety matters as they relate to

land use planning are incorporated at the planning stage for schemes involving a high-rise residential building. This description is provided here for information purposes only; this Act contains no provisions in relation to this stage.

41 Planning Gateway one:

- involves the Health and Safety Executive (HSE) being a statutory consultee before permission is granted for development which involves or is likely to involve a high-rise residential building in certain circumstances;
- requires relevant applications for planning permission to include a fire statement (on a form published by the Secretary of State, or one to substantially the same effect) to ensure applicants have considered fire safety issues as they relate to land use planning matters (for instance layout and access); and
- helps inform effective decision-making by local planning authorities (or the Secretary of State as the case may be) so that those decisions and the actions that flow from them properly reflect and respond to the needs of the local community.

Gateway two

42 Gateway two occurs prior to construction work beginning on a higher-risk building. It replaces the current building control "deposit of plans" stage; at this stage an application will need to be provided to the Building Safety Regulator with their full design intention.

43 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.

44 Dutyholders will be required to submit key information to the Building Safety Regulator as part of the building control application, to demonstrate how their proposals will comply with the requirements of building regulations. Design decisions in relation to fire and structural safety must be well considered and justified, to ensure they will work effectively for the building in use.

Gateway three

45 Gateway three is equivalent to the current completion/final certificate phase, where building work on a higher-risk building has finished and the Building Safety Regulator assesses whether the work has been carried out in accordance with the building regulations.

46 At this point all golden thread documents and information must be handed over to the new building owner. Dutyholders will be required to submit to the Building Safety Regulator a building control application with prescribed documents and information on the final, as-built building.

47 Gateway three is a "hard stop" where the Building Safety Regulator will assess the application against applicable requirements of the building regulations, undertake final inspections of the completed building work, and issue a completion certificate on approval. Only once Gateway three has been passed can the new building be registered with the Building Safety Regulator. The registration process is distinct to the Gateway three process, and both processes must be completed before occupation of the building is allowed to commence. This increased regulatory oversight is to ensure that no building, or part of a building, is occupied before it is safe, and that building owners have the information they need to manage building safety during occupation.

Golden thread of information

48 The Act includes provisions to require the creation and maintenance of a golden thread of information. The intention is 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.

49 This information will ensure that the original design intent and any subsequent changes to the building are captured, preserved and used to support safety improvements.

50 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 new building owner. This information will be managed by the Accountable Person during occupation.

Occurrence reporting

51 Provisions are included in the Act that require mandatory occurrence reporting (MOR) to be undertaken for higher-risk buildings. All structural and fire safety occurrences which could cause a significant risk to life safety will need to be reported to the Building Safety Regulator.

52 Dutyholders in design and construction will be required to establish a framework and process for reporting mandatory occurrences, which must include enabling workers on-site to report mandatory occurrences. Dutyholders will also be required to report such mandatory occurrences to the Building Safety Regulator.

53 In occupation, the Accountable Person will be required to set up a framework and process to capture and report mandatory occurrences to the Building Safety Regulator. Where a building has multiple Accountable Persons and a Principal Accountable Person (see paragraph 55) the Principal Accountable Person will be required to establish and oversee a single mandatory occurrence reporting framework and process for the whole building. Each Accountable Person will be responsible for ensuring compliance with MOR in the area for which they have responsibility, and each Accountable Person will have a responsibility to coordinate with the Principal Accountable Person, who will have a lead responsibility in ensuring that the whole building is under an effective mandatory occurrence reporting framework and process.

54 The Act also includes measures which 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, and a section requiring the Building Safety Regulator to make arrangements for a person to establish and operate a system for the voluntary reporting of information about building safety.

Higher-risk buildings in occupation

The Accountable Person and Building Assessment Certificate

55 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.

56 Where there are multiple Accountable Persons in a building, one of them will be identified as the lead Accountable Person, known as the Principal Accountable Person. There will be a duty on Accountable and Responsible Persons in a building to cooperate with each other and with the Principal Accountable Person. It will be backed up by enforcement and sanctions, so that it becomes an offence not to cooperate. Where reference is made to the duties of an "Accountable Person", this should be taken to also mean duties to be either discharged and/or coordinated by a Principal Accountable Person in circumstances where there are multiple Accountable Persons in a building.

57 The Act places a duty on the Accountable Person to register any building that is in scope of the new regime with the Building Safety Regulator before it becomes occupied. Existing occupied buildings will have to be registered within a fixed transition period following the new regime coming into force.

58 The Act places a duty on the Accountable Person to apply to the Building Safety Regulator for a Building Assessment Certificate. The Building Safety Regulator will issue a Building Assessment Certificate if it is satisfied that the Accountable Person is complying with the statutory obligations placed on them. The Accountable Person is required to display the most recent issue of the certificate in a prominent position in the building.

Duty to manage risks and safety cases

59 The Act creates an ongoing duty on the Accountable Person to assess the building safety risks relating to their building, to take all reasonable steps to prevent a building safety risk materialising, and to limit the severity of any incident resulting from such a risk. Building Safety risks are defined in the Act as risks to the safety of persons in or about buildings resulting from the occurrence of fire spread, structural failure and any other risk that may be prescribed by regulations in the future.

60 The Accountable Person will need to demonstrate how they are meeting this ongoing duty via their safety case and Safety Case Report, which they will be required to keep up to date. The safety case comprises the full body of evidence relating to the assessments and ongoing management of building safety risks.

61 The Accountable Person will be required to submit the building's Safety Case Report to the Building Safety Regulator as part of the process for issuing a Building Assessment Certificate or on request from the Building Safety Regulator. The report should summarise all the key components of the wider safety case, providing a justification for the safety measures in place. It will include references to supporting documentation and safety information, including all the evidence that supports how these building safety risks are being assessed and managed, contained within the golden thread of information. A key part of the report will be the overview of the Accountable Person's safety management system (SMS), which explains the policies, procedures and processes they have in place across the organisation to deliver continuous management of building safety risks.

62 The Safety Case Report should set out the building safety risks in the building and how these are being managed on an on-going basis, to ensure resident safety.

63 The Act also includes that the Accountable Person must review the risk assessments on which their arrangements for managing building safety risks and Safety Case Report are based, and revise the report if they consider the report is no longer valid or they are requested to do so by the Building Safety Regulator. Where a Safety Case Report is revised, the Building Safety Regulator must be notified. In addition to assessing the Safety Case Report as part of the Building Assessment Certificate process, the Building Safety Regulator may request the submission of a Report where necessary, for example following a notification of a revision.

64 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 on what further measures are needed in their risk management and safety arrangements and should be evidenced within the Safety Case Report.

65 Where agreement cannot be reached, the Building Safety Regulator will be able to issue a compliance notice, setting out specific areas of concern and, where appropriate, 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 and/or Special Measures proceedings may ensue.

Residents and redress

66 The Act places statutory obligations on the Accountable Person that will help to promote a strong partnership with residents. These obligations cover engagement and participation, complaints handling, information provision and the role of residents in helping to keep the building safe.

67 The Accountable Person will have an obligation to produce and keep up to date a Residents' Engagement Strategy setting out how they will create inclusive opportunities for residents to participate in decision-making about their building.

68 The Accountable Person will be required to put in place an internal complaints process for safety complaints, and residents will be able to escalate safety concerns where there is a risk to building safety to the Building Safety Regulator. There will also be a duty to cooperate between the Building Safety Regulator and other regulators, ombudsmen and redress schemes to support effective complaints handling.

69 Alongside this, residents will have a clear legal obligation to comply with a request made by the Accountable Person for information reasonably required for the purpose of fulfilling their duty to either assess or manage building safety risks. They will be required not to act in a way that creates a significant risk of a building safety risk materialising, nor to interfere with a relevant safety item.

70 The Act also makes changes to the way the Defective Premises Act 1972 operates. That Act enables a person with a legal or equitable interest in a dwelling to sue a person (including a corporate body) who carried out work to "provide" that dwelling, i.e. built it from new or converted it from another type of building. The Act amends the 1972 Act and the Limitation Act 1980 to extend the period within which legal action may be brought. The limitation period is extended retrospectively from six years to 30, and prospectively from six years to 15. The limitation period under (the yet to be commenced) section 38 of the Building Act 1984 is also extended from six to 15 years. The Act also creates a new duty on those who do any work on a building which contains a dwelling to ensure that the work does not render the dwelling unfit for habitation. The duty will apply only to those who are doing work on a building in the course of business. The new duty will also be subject to a 15-year prospective limitation period.

Historic Remediation Costs

71 The Act also brings forward measures to protect leaseholders from the costs associated with the remediation of historical building safety defects in medium- and high-rise buildings. The Act protects qualifying leaseholders (those living in their own homes or with up to three UK properties in total) from all costs associated with the remediation of unsafe cladding, and provides additional protections from non-cladding costs, including the costs associated with interim measures such as waking watch patrols.

72 The Act means that building owners and landlords are now liable to pay to fix historical fire safety defects if they are (or are linked to) the developer of a building with fire safety defects, or if they meet a minimum contribution threshold. If these tests are not met, non-cladding costs can be recovered from qualifying leaseholders; however, these costs are subject to fixed caps.

73 The Act contains enforcement provisions to ensure the protections are complied with, including mechanisms to require landlords to fix, and pay to fix their buildings, and to secure funds during the process of winding up a company.

Enforcement and sanctions

74 The Building Safety Regulator will have the power to ensure compliance with the measures outlined in the Act through a combination of toughened existing powers and new powers.

Toughened existing powers

75 The Act seeks to extend 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 from one year to ten years for section 36 notices, which require

correction of non-compliant work; the Act makes the section 35 offence triable either way (i.e. in either the Crown court or a magistrates' court), which removes altogether the time limit for bringing prosecutions for that offence.

New powers

76 The Building Safety Regulator will have powers to prosecute all offences in Parts 2 and 4 of the Act (including Schedule 2), and the Building Act 1984. In addition, for all offences in the Building Act 1984 and Parts 2 and 4, where an offence is committed by a corporate body with the consent or connivance of a director, manager etc of that corporate body, or is attributable to their neglect, that person will be liable to be prosecuted as well as the corporate body.

77 The Building Safety Regulator will 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).

78 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.

79 The Act includes powers of entry to gather evidence for compliance action. A warrant from a magistrates' court will be required for premises used wholly or mainly as a private dwelling, or where force needs to be used to enter any premises.

80 The Building Safety Regulator will also hold to account local authorities, registered building control approvers and registered building inspectors, for example where they have not 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.

81 The Act also includes powers for the Building Safety Regulator to apply to the First-tier Tribunal for an order appointing a Special Measures Manager to take over the functions of the Accountable Person, where there is a significant failure or repeated failures to comply with their statutory duties.

Building control reform

82 The Act 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.

83 The Building Safety Regulator will be required to establish and maintain a register of building inspectors (individuals) and building control approvers (either organisations or individuals). These changes introduced through the Act are reflected in new titles for individuals and organisations.

84 Individuals and organisations currently known as "Approved Inspectors" who wish to continue undertaking building control work will need to register as "building control approvers".

85 The role of a registered building inspector being introduced through this Act 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 to transition to this role.

86 The Act also removes the ability for a person carrying out building work on higher-risk buildings to choose their own building control body where building control is required. The Building Safety Regulator will be the building control body for these buildings.

87 Additional amendments to existing legislation:

- give obligations to the local authority, registered building control approver and person carrying out the work to cancel an initial notice when the work covered by the notice becomes higher-risk building work;
- amend the existing powers and obligations for local authorities, registered building control approver and the person carrying out the work to cancel initial notices for non-higher-risk building work;
- give powers to the Building Safety Regulator to be able to enforce building regulations when non-higher-risk building work becomes higher-risk building work;
- 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 sections 5 or 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 criteria for and/or approving an insurance scheme; and
- create a new process to appoint a new registered building control approver where an existing approver ceases to supervise work and the existing works may or may not have been signed off by the previous approver.

Other provisions

Strengthened Fire Safety Order

88 To support the whole-system approach to the management of building and fire safety in higher-risk buildings in occupation, the Act includes provisions to strengthen the Fire Safety Order in order to support greater compliance and effective enforcement, which will better protect relevant persons' safety in regulated premises. These amendments are proportionately aligned to risk. The amendments require that:

- the Responsible Person must record their fire risk assessment;
- the Responsible Person must not appoint a person to assist them with making or reviewing a fire risk assessment unless that person is competent;
- the Responsible Person must record their fire safety arrangements;
- for buildings consisting of two or more sets of domestic premises, the Responsible Person(s) must provide specific fire safety information to residents about relevant fire safety matters, and must keep records of the relevant fire safety matters;
- the Responsible Person must take reasonable steps to identify themselves to all other Responsible Persons in the same premises, inform them of their name and United Kingdom address and the part of the premises they consider themselves to be Responsible Person for and keep a record of that information;
- departing Responsible Persons must provide specific relevant fire safety information they hold to incoming Responsible Persons for premises or parts of premises for which they are responsible, keeping records of the fire safety information;
- for higher-risk buildings in England, the Responsible Person must identify and co-operate with Accountable Persons in the same premises to enable them to carry out their duties under the Building Safety Act;
- increased financial penalties of unlimited fines apply for the criminal offences of impersonating an inspector, failing to comply with any requirements imposed by an inspector, and failing to comply with requirements relating to the installation of luminous tube signs; and
- Article 50 of the FSO (recently amended by the Fire Safety Act 2021) which relates to the provision of guidance for Responsible Persons, be amended to expressly provide that the Court may take compliance or non-compliance with such guidance into account when considering offences of breach of the Order.

Construction products

89 The previous regulatory framework for construction products, derived from the EU Construction Products Regulation 2011 (EU No 305/2011) as retained in UK law, covers some of the products placed on the UK market. This framework only applies to products where a designated standard has been adopted or a UK Technical Assessment applies - some 400 product families. The Act 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.

90 The Act creates powers to make provision for regulation of all construction products placed on the UK market. Firstly, it takes powers to make regulations requiring manufacturers to ensure that the products they supply are safe.

91 The Act also creates powers for the regulation of "designated products", which covers the same products regulated by the EU framework.

92 The Act 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 Act takes powers for the regulation of such products against safety critical standards.

93 The Act 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 Act creates powers for an enforcement regime to support the new regulatory regime as well as create additional enforcement powers for the existing regulatory regime for the Secretary of State, which will pave the way for us to set up a national regulator for construction products within the Office for Product Safety and Standards (OPSS) to discharge these powers. These powers will allow Trading Standards' existing enforcement regime to be extended to cover the new regulatory requirements. The Act also creates powers to allow for charging and provide for recovery of costs.

94 The Act creates powers to make regulations allowing the sharing of information about construction products between regulators, which could include, for example, between the new national regulator for construction products, the Building Safety Regulator and local authority building control.

95 The Act provides an ambitious toolkit of measures which will allow those directly responsible for defective building work to be held to account.

96 One of these measures introduces a new cause of action which allows for manufacturers and sellers of construction products to be held accountable where the use of a construction product in construction works causes or contributes to a dwelling being unfit for habitation on completion of those works. This applies retrospectively, in relation to construction products which are cladding products only, and where the relevant products are in breach of regulations, inherently defective, or have been mis-sold. Prospectively, it applies to all construction products, where the relevant product is in breach of regulations, inherently defective, or has been mis-sold. The limitation period for work completed before commencement will be 30 years; the limitation period for work completed after commencement will be 15 years.

97 The causes of action in this act apply equally in England and Wales and Scotland. The Act provides a power for the causes of action to be extended, by regulations, to Northern Ireland.

98 A further power in the Building Safety Act to make regulations will enable the Secretary of State to make a costs contribution order or apply to the court for an order to be made, to require construction products manufacturers, their authorised representatives, importers and distributors ("economic operators") to pay for or contribute towards the cost of remediation works.

99 The Secretary of State would be able to use this power following a successful prosecution for non-compliance with construction product regulations, where use of the relevant product in the construction, or further works, has caused or contributed to making dwellings unfit for habitation.

100 This power applies UK wide.

New Build Warranties

101 At present, 10-year warranties are provided on new homes as a requirement to obtain mortgage finance rather than as a legal requirement. As part of the general aim of improving the safety and standards of buildings, this Act mandates provision of warranties in law.

102 The Act sets a legal requirement for the developer of every new build home to provide a warranty for the benefit of a purchaser. The warranty must meet minimum standards, which will be set in regulations. The warranty must be for a minimum term of no less than 15 years.

103 The Act also enables the Secretary of State to set out in regulations i) the level of financial penalties that could be issued to developers selling new build homes without a compliant warranty, including provision for interest or additional penalties for late payment and ii) the process for considering and issuing such penalties and the right to appeal.

104 The minimum warranty term of 15 years mirrors the extended limitation period to bring litigation under section 1 of the Defective Premises Act 1972 and section 38 of the Building Act 1984.

Improving the competence of architects

105 The Act amends the power for the Architects Registration Board (ARB) to monitor competence of the architects on their Register. 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.

106 This power extends to all architects on the Register. The Architects Registration Board will set the criteria, in consultation with relevant bodies (such as the Royal Institute of British Architects) and other bodies in the sector, where appropriate. If an architect does not meet

these requirements, the Architects Registration Board will have the power to remove them from the Register. The architect will be able to appeal such a decision to the new Appeals Committee, to be introduced by the Act.

107 Existing 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.

108 Until now, if an architect was sanctioned, their ruling was listed on the Architects Registration Board website. The Act 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.

109 The Act allows the Secretary of State to make regulations about fees that the Architects Registration Board can charge. Such regulations will enable 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. The intention is that this would be on a cost-recovery basis, as the Architects Registration Board is self-funded.

Removal of the democratic filter

110 The Act 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.

111 This is achieved by removing the existing requirement ("the democratic filter") for social housing residents wishing to escalate their complaint to the Housing Ombudsman to do this 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

112 The Act includes provisions that allow relevant owners of new build homes to escalate complaints to a scheme to be known as 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.

113 The New Homes Ombudsman scheme must meet minimum requirements set out in the Act. The Act includes provision for the Secretary of State to provide financial assistance to the New Homes Ombudsman scheme.

114 The Act introduces a power to require developers, or developers of a specified description, to become, and remain, members of the New Homes Ombudsman and to provide information to new build homebuyers about the scheme, and makes provision for sanctions should developers breach these requirements. Developers who receive a sanction will be able to appeal that decision. The Act 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.

115 The Act also includes provisions requiring the person who maintains the scheme to maintain a register of members, which must be available for inspection by members of the public.

116 Finally, the Act introduces a power to issue or approve a code of practice about 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 Secretary of State must ensure the current version of the code is published.

117 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

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

Effect

119 Details exactly what the section is going to do. It also explains whether the section needs to be considered in conjunction with other provisions of the Act.

Background

120 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 Act, or the position under common law. For example: "this section replaces X provision in the XX Act 2000" or "this is a new provision".

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

Proposed use of power

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

Examples

123 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 the Act.

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

Legal background

Building Safety Regulator

125 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

126 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 the 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.

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

Higher-risk buildings in occupation

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

129 The Landlord and Tenant Act 1985 is amended to imply terms into leases for a term of seven years or more of dwellings in higher-rise buildings so that building safety measures, the associated costs and the related charges of the ongoing safety management of the building may be passed onto leaseholders and will not be reliant on the service charge provisions in each lease. The landlord makes a commitment to the leaseholder to carry out the necessary measures, and to observe the statutory requirements in relation to raising charges; and the leaseholder makes a commitment to the landlord to pay a fair share of reasonable charges and co-operate with the building safety regime.

130 Further amendments being made to the existing section 20 consultation process in the Landlord and Tenant Act 1985. These will set out additional steps the landlord must undertake when embarking on defined building safety remedial works. The landlord must take reasonable steps:

- to ascertain whether any grant is payable in respect of the remediation works and if so to obtain the grant;
- to ascertain whether all or any of the cost of remediation works may be met by a third party and if so to obtain monies from the third party; and
- to ascertain whether any other prescribed kind of funding is available and to obtain such funding.

131 These amendments are designed to offer further protections to leaseholders, ensuring that all other cost recovery avenues are appropriately explored first. This does not change the existing liability of leaseholders to pay for any building safety works.

Other provisions

Architects

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

Democratic filter

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

Construction products

134 Regulation of construction products in the EU is under the provisions of the EU Construction Product Regulations (305/2011). This was 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) and the Construction Products (Amendment etc.) (EU Exit) Regulations 2020 (2020/1359).

135 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.

136 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)).

137 A list of legislation referenced or amended by the Building Safety Act is as follows (alphabetised):

- Architects Act 1997;
- Building Act 1984;
- The Building Regulations 2010;
- Commonhold and Leasehold Reform Act 2002;
- The Construction Products Regulations 1991;
- The Construction Products Regulations 2013 ;
- The Construction Products (Amendment etc.) (EU Exit) Regulations 2019 ;
- The Construction Products (Amendment etc.) (EU Exit) Regulations 2020 ;

- Regulation (EU) No 305/2011 (regulation for laying down harmonised conditions for the marketing of construction products) (retained EU Law);
- Criminal Justice Act 2003;
- Data Protection Act 2018;
- Defective Premises Act 1972;
- Enterprise and Regulatory Reform Act 2013;
- Environmental Protection Act 1990;
- European Communities Act 1972;
- European Union (Withdrawal) Act 2018;
- Fire and Rescue Services Act 2004;
- Freedom of Information Act 2000;
- Health and Safety at Work etc. Act 1974;
- Housing Act 1996;
- Housing Act 2004;
- Housing and Regeneration Act 2008;
- Human Rights Act 1998;
- Insolvency Act 1986;
- Land Registration Act 2002;
- Landlord and Tenant Act 1985;
- Landlord and Tenant Act 1987;
- Leasehold Reform, Housing and Urban Development Act 1993;
- Limitation Act 1980;
- Limited Partnerships Act 1907;
- Local Government Act 1972;
- Local Government etc (Scotland) Act 1994;
- Local Government (Miscellaneous Provisions) Act 1982;

- Parliamentary Commissioner Act 1967;
- Partnership Act 1890;
- Prescription and Limitation (Scotland) Act 1973;
- Prevention of Damage by Pests Act 1949;
- Public Health Act 1961;
- The Regulatory Reform (Fire Safety) Order 2005
- Sentencing Act 2020;
- Sustainable and Secure Buildings Act 2004;
- Town and Country Planning Act 1990;
- Tribunals, Courts and Enforcement Act 2007.

Territorial extent and application

138 Section 168 sets out the territorial extent of the sections in the Act. The extent of an Act can be different from its application. Application is about where an Act produces a practical effect. The commentary of many of the individual provisions of the Bill includes an explanation of their extent and application.

139 The UK Parliament will not normally legislate for areas within the competence of the Senedd Cymru, the Scottish Parliament, or the Northern Ireland Assembly without the consent of the legislature concerned. In line with the Sewel Convention, the UK Government sought the legislative consent of all the Devolved Legislatures for the provisions that engage the Legislative Consent Motion process. The Devolved Legislatures for Wales and Scotland agreed legislative consent on the recommendation of their respective Devolved Administrations: the Senedd Cymru on 29 March 2022 and the Scottish Parliament on 24 March 2022. The Northern Ireland Assembly did not provide legislative consent.

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.

Part 1: Introduction

Section 1: Overview of Act

Effect

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

Background

142 This is a new provision. It highlights that this Act amends the Building Act 1984.

Part 2: The Regulator and its functions

The regulator and its functions

Section 2: The Building Safety Regulator

Effect

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

144 Section 2 also introduces Schedule 1, which amends the Health and Safety at Work etc. Act 1974 to make provisions supporting the creation of the Building Safety Regulator within the Health and Safety Executive.

Background

145 This is a new provision.

146 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.

Section 3: The regulator: objectives and regulatory principles

Effect

147 Section 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), and certain principles which will guide the way the Building Safety Regulator undertakes its main operational functions.

148 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.

149 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 section 30 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 Institution, and standards recognised within industry.

150 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.

151 The Building Safety Regulator will not be responsible directly for the construction or management of buildings - this Act, alongside the Building Act 1984 and building regulations, assigns clear duties in respect of those matters. For example, the Accountable

Person is primarily responsible for ensuring that a higher-risk building is managed safely when occupied (see later sections). 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.

152 Section 3 then sets out principles to which the Building Safety Regulator must have regard when delivering its main operational functions. These principles are focused on the way in which the Building Safety Regulator should undertake its main operational functions. The principles reflect established regulatory good practice.

153 Under the principles, operational activity should be consistent, transparent and accountable, which could be secured by grounding operational activity on published policy and guidance, and publishing performance metrics about how the activity was undertaken. Activity should be targeted on cases where action is needed, and be proportionate, rather than (for example) requiring excessively costly measures for little benefit in terms of reduction in risk.

154 All the Building Safety Regulator's building functions are subject to the principles, except the regulator's general functions in sections 4 to 6. This reflects that these general functions focus on driving culture change and improvement across whole industries, or monitoring safety and standards across all buildings. When undertaking these very general functions, which are not focused on enforcing in individual cases, certain of the principles (in particular targeting action only at cases where action is needed) are not appropriate.

155 Section 3 defines the Building Safety Regulator's "building functions" as:

1) Building functions provided for in this Act, the Building Act 1984, and regulations made under those two pieces of legislation;

2) Functions of the Health and Safety Executive defined as building functions by regulations made under this section;

3) Functions of the Health and Safety Executive provided for under the Health and Safety at Work etc. Act 1974 that relate directly to the other building functions (such as exercising the powers in new section 11A Health and Safety at Work etc. Act 1974, which enables the Health and Safety Executive to make arrangements to deliver its building functions).

156 Building functions are subject to the Building Safety Regulator's objectives, would form part of the Building Safety Regulator's strategic plan (see section 17), are relevant to powers to share information and duties to cooperate (see section 27 and Schedule 3) and are subject to the regular review of the regulatory system (see section 162).

Background

157 Section 3 is a new provision.

158 The principles draw on the example of section 21 of the Legislative and Regulatory Reform Act 2006. Utilising established principles of regulatory best practice, which apply to Health and Safety Executive's existing regulatory functions, will help ensure that the Health and Safety Executive delivers coherent and effective regulation across its different functions. The principles reflect both the approach the Health and Safety Executive takes to its existing functions, and the proportionate approach the Health and Safety Executive will take to its new building functions.

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.

Example 2

When undertaking its functions in respect of higher-risk buildings under the new regime in Part 4 of the Act, the Building Safety Regulator could exercise its functions with a view to securing 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 exercise its functions with a view to securing safety.

When enforcing Part 4, the Building Safety Regulator will have regard to the principles. We expect that the regulator will operate consistently and transparently, e.g. on the basis of a published enforcement framework, which is the approach suggested by the Regulator's Code. The action taken will be proportionate to the seriousness of the breach and targeted at cases where action is needed.

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

Effect

159 Section 4 requires the Building Safety Regulator to assist and encourage those responsible for the safe construction and management of higher-risk buildings, as well as residents in those buildings, to secure the safety of people in or around those buildings in relation to building safety risks. This includes helping to make sure that disabled people are safe from building safety risks. This section should be read alongside Part 3 and Part 4 of the Act.

160 The effect of this section 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 section 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.

161 This section does not create any individual right to assistance in a particular case.

Background

162 This is a new provision.

> ### Example 1
> The Building Safety Regulator could meet this duty in respect of Accountable Persons by setting up working groups to understand the obstacles to compliance with the new regime, and then taking steps to overcome the 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.
>
> ### Example 3
> The Building Safety Regulator could publish best practice guidance to help Accountable Persons secure the safety of disabled people in or around those buildings.

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

Effect

163 Section 5 requires the Building Safety Regulator to monitor the safety of people in buildings and the standard of buildings, on an ongoing basis.

Background

164 This is a new provision.

Example

The Building Safety Regulator 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.

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

Effect

165 Section 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

166 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 section 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.

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.

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.

Example 2

When undertaking its functions in respect of higher-risk buildings under the new regime in Part 4 of the Act, the Building Safety Regulator could exercise its functions with a view to securing 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 exercise its functions with a view to securing safety.

When enforcing Part 4, the Building Safety Regulator will have regard to the principles. We expect that the regulator will operate consistently and transparently, e.g. on the basis of a published enforcement framework, which is the approach suggested by the Regulator's Code. The action taken will be proportionate to the seriousness of the breach and targeted at cases where action is needed.

Section 7: Proposals and consultation relating to regulations

Effect

167 Section 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, in most cases, be best positioned to propose changes to the regulations.

168 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.

169 Section 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.

170 This section applies to regulations made under Parts 2 and 4 of the Act, with the exception of regulations that change the scope of the higher-risk regime (made under section 62, section 65 and section 68), where there are specific procedures in place for the making of regulations.

Background

171 Section 7 is a new provision which applies exclusively to regulations made under this Act. This section follows the same principles as section 11(3) and section 50 of the Health and Safety at Work etc. Act 1974.

172 The Act provides for an equivalent provision (new section 120B Building Act 1984) at Schedule 5, paragraph 77 in relation to 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 Act.

Example

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 section 85 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.

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

Effect

173 Section 8 requires the Building Safety Regulator to make arrangements for a person to establish and operate a system for the voluntary reporting of information about building safety to the person operating the system.

Background

174 This is a new provision and is modelled on existing voluntary occurrence reporting systems used in industries including structural safety and aviation. Recommendation 1.4 of the Independent Review recommends that the existing Confidential Reporting on Structural Safety (CROSS) be extended and strengthened to cover a wider range of engineering safety concerns. This section will contribute to the fulfilment of this recommendation whilst retaining flexibility for another person to operate the voluntary occurrence reporting scheme.

175 The system of voluntary reporting of information about building safety is intended to promote a positive culture within safety management systems.

176 Reports will be received, anonymised, and then analysed and published by the person operating the system. Reports will be made on all buildings including those which are not higher-risk buildings. Safety occurrences which cause a significant risk to life safety in higher-risk buildings must be reported through mandatory occurrence reporting. Voluntary occurrence reporting is not intended to be used for enforcement action, but should confidentially capture occurrences that are of a lower risk level and are of value to industry for information sharing, intelligence gathering and improvement of safety within the built environment.

177 Guidance will be provided to set out what can be reported under the voluntary occurrence reporting system. The specified manner of reporting is envisaged to be via an online portal.

Example

During a concrete pre-pour quality inspection on the 4th floor of an apartment block, shear links to a slab over one column are found to be at the incorrect spacings. The issue is resolved immediately on site and doesn't present a significant risk to life safety here, but a similar issue could be present but undetected on other sites and present a bigger danger elsewhere. The person working on the incident reports it through the voluntary occurrence reporting system, where it is then analysed, anonymised and published by the person operating that system. By voluntarily reporting this issue the important details and lessons learned are shared with industry. This release of intelligence would increase industry awareness of the issue and enable workers to better identify and resolve it should it occur elsewhere, averting danger that may otherwise have gone unnoticed.

Committees

Section 9: Building Advisory Committee

Effect

178 Section 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.

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

Background

180 This is a new provision, and is in addition to the general powers to set up committees relating to building functions and pay committee members under new section 11A of the Health and Safety at Work etc. Act 1974.

181 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

The Building Safety Regulator exercises its duty and sets up an advisory committee called the Building Advisory Committee. In carrying out its 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.

Section 10: Committee on industry competence

Effect

182 Subsection (1) requires the Building Safety Regulator to establish an industry competence committee and provide support as necessary (for instance by providing the secretariat function).

183 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.

184 The Building Safety Regulator may set up sub-committees of the committee, to consider specific issues or areas of interest.

Background

185 This is a new provision that will require the Building Safety Regulator to establish an industry competence committee with the functions specified in this section. This is in addition to the general powers to set up committees relating to building functions and pay committee members under new section 11A of the Health and Safety at Work etc. Act 1974.

186 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, which could include reviewing sector-specific competence frameworks against the benchmark competence 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.

Section 11: Residents' panel

Effect

187 This section 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.

188 The panel must include residents, and may also have members from the following groups: owners of residential units (e.g. 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. The representative group could be a member of the panel as a body, or the member of the panel could be an individual member of such representative bodies (expected to be experts or representatives nominated by that body).

189 The Building Safety Regulator must take all reasonable steps to secure the representation of the interests of disabled residents of higher-risk buildings on its Residents' Panel. The Regulator could achieve this by ensuring the committee includes one or more residents of higher-risk buildings who are disabled, appointing a body to the panel who sends their most appropriate representative from time to time or nominating individual members of such representative bodies (expected to be experts or representatives nominated by that body). These bodies and representatives must be those which will support or promote the interests of disabled people including residents of higher-risk buildings

190 The Act also requires that the Building Safety Regulator must consult the residents' panel on certain matters which it is expected would be of particular interest and importance for residents of higher-risk buildings, specifically:

- Under this section, 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 section, the residents' panel must be consulted on guidance relating to any duties under section 89 (provision of information etc. to the regulator, residents and other persons) where the guidance is about information provision to residents.
- Under this section, the residents' panel must also be consulted on guidance relating to section 91 (residents' engagement strategy), section 92 (requests for further information), section 93 (complaints procedure operated by the principal accountable person), section 95 (duties on residents and owners) or regulations made under any of those Sections.
- Section 17 requires that the Building Safety Regulator must consult the residents' panel on its strategic plan.
- Section 94 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.

191 Section 11 should also be read alongside section 20, which requires the Building Safety Regulator to publish an annual statement on how it engages with the residents' panel, in addition to any other wider engagement with residents and related groups.

Background

192 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. This is in addition to the general powers to set up committees relating to building functions and pay committee members under new section 11A of the Health and Safety at Work etc. Act 1974.

193 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.

194 Disabled residents may be particularly vulnerable if there is a major incident in a high-rise residential building. Therefore, specific provision is made to help ensure that the Building Safety Regulator seeks representation from disabled residents (or bodies that represent them).

Section 12: Committees: power to amend or repeal

Effect

195 Section 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. Regulations to repeal a committee are only able to be brought forward by Ministers following a proposal by the Building Safety Regulator to the Secretary of State.

Background

196 Section 9, section 10 and section 11 of this Act make provision for the creation of a Building Advisory Committee, a committee on industry competence, and a residents' panel.

197 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 Act.

198 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.

199 Repeal of the provision for a statutory committee would be a particularly important and sensitive use of the this delegated power and is intended to be used solely to assist the Building Safety Regulator deliver its functions effectively. Therefore, regulations to repeal a statutory Committee can only be brought forward following a proposal by the Building Safety Regulator to the Secretary of State.

Example

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, and their experience means they are able to adapt their respective roles in developing proposals for guidance and regulations .

In relation to the committee on industry competence, the Government considers that the committee's role will be essential in the coming years to ensure the delivery of the Independent Review's recommendations on industry competence. 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 the scope of the higher-risk buildings regime. For example, if hospitals were brought into scope of the Part 4 occupation regulatory regime, consideration would be given as to whether to extend the panel to include patients and NHS staff, and representatives of those groups. In those circumstances the consequential amendments power might also be used to amend section 20.

Staffing etc

Section 13: Local authorities and fire and rescue authorities: assistance etc to regulator; Section 14: FSO authorised persons: assistance etc to regulator; and Section 15: Provision of assistance etc: supplementary

Effect

200 Section 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.

201 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).

202 This section enables the Building Safety Regulator to direct a local authority or fire and rescue authority to provide support requested under that section. This section 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 consider whether it can provide the assistance requested, or to give reasons why this is not possible.
- 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. 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.

203 Section 14 enables the Building Safety Regulator to call on assistance from Crown Premises Fire Safety Inspectors, appointed by the Secretary of State under the Fire Safety Order as "FSO authorised persons", when regulating higher-risk buildings. It ensures that these FSO authorised persons have the legal power to provide assistance requested by the Building Safety Regulator. This provision is intended to be used for Crown premises within scope of the Part 4 occupation regime.

204 This section does not contain a power to direct because FSO authorised persons are Crown servants. If a request for support by the Building Safety Regulator were not agreed and the Building Safety Regulator considered securing such support from FSO authorised persons to be essential, the Building Safety Regulator may approach the Secretary of State to request their assistance.

205 Section 15 makes further provisions in relation to the assistance to be provided by local authorities, fire and rescue authorities and FSO authorised persons. This section 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.

206 This section 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. FSO authorised persons are Crown servants and can be supported administratively by the Government without further legislation.

207 This section places a duty on fire and rescue authorities and local authorities to use competent staff when supporting the Building Safety Regulator. The Secretary of State will ensure that FSO authorised persons are sufficiently competent.

208 This section also enables the Secretary of State to make regulations in respect of the provision of support by local authorities, fire and rescue authorities, or FSO authorised persons to the Building Safety Regulator.

Background

209 Section 13, section 14 and section 15 are new provisions.

210 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. Section 13 and section 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.

211 For Crown premises, FSO authorised persons (otherwise known as Crown Premises Fire Safety Inspectors) act as the enforcement authority under the Fire Safety Order (see article 25(1)(e)). Therefore, it is appropriate that for Crown premises within scope of the regime, the Building Safety Regulator works closely with FSO authorised persons in decision-making on those buildings.

Example

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 (or a FSO authorised person for Crown premises) 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 (for instance 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.

Section 16: Guidance about the provision of assistance

Effect

212 Section 16 enables the Building Safety Regulator to prepare guidance aimed at local authorities, fire and rescue authorities and FSO authorised persons about how they provide assistance to the Building Safety Regulator in the regulation of higher-risk buildings under section 13, section 14 and section 15. Local authorities, fire and rescue authorities and FSO authorised persons must have regard to such guidance, which can be issued only with the consent of the Secretary of State.

Background

213 This is a new provision.

> ### Example
> 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 section 15.

Plans and reports

Section 17: Strategic plan; and Section 18: Revised strategic plans

Effect

214 Section 17 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.

215 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.

216 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 commencement of section 17. A new plan must be submitted to the Secretary of State before the period covered by the existing plan finishes.

217 Section 18 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 new risk to building safety be identified or 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

218 Section 11(5)(a)-(b) of the Health and Safety at Work etc. Act 1984 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 the Health and Safety Executive's proposals with or without modifications.

219 Schedule 1, paragraph 2 excludes building functions from the requirement under section 11(5)(a)-(b) of the Health and Safety at Work etc. Act 1974 to ensure that this provision (section 17) 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

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. 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, it is expected that the strategic plan may be supported by a more detailed annual business plan for the building functions.

Section 19: Annual report about information provided under mandatory reporting requirements

Effect

220 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 regime.

221 Section 19 requires the Building Safety Regulator to publish aggregated information it has received from dutyholders through mandatory occurrence reporting requirements on an annual basis. This section makes clear that information contained within the annual report must not contain any personal data.

Background

222 This is a new provision.

223 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 section ensures that this information is made publicly available.

Example: Information published as part of an annual report

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.

Section 20: Statement of regulator's engagement with residents etc

Effect

224 Section 20 requires the Building Safety Regulator to produce a statement at least annually about how it has engaged with residents of higher-risk buildings and related groups about the work of the Building Safety Regulator. This statement must cover engagement with:

- the residents' panel (section 11);
- residents of higher-risk buildings (the report must specifically include engagement with residents who are disabled);
- owners of residential units (e.g. flats) in higher-risk buildings who are not occupying the property; and
- organisations that represent, support or promote the interests of residents or owners.

225 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. The Regulator could also publish the statement elsewhere.

Background

226 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. Disabled residents may be particularly vulnerable if there is a major incident in a higher-risk building. Therefore, specific provision has been made to ensure that the regulator seeks the views of disabled residents and is transparent about how, as the Building Safety Regulator, it engages disabled residents in its work.

Example

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 regulatory regime has prioritised the safety of residents.

Section 21: Report on certain safety-related matters

Effect

227 This section requires the Building Safety Regulator to conduct reviews into four specific safety related matters within three years of the section coming into force.

228 These reviews will be conducted with a view to improving the safety of persons in or about relevant buildings.

229 The regulator must conduct a review, including a cost-benefit analysis, of the following area:

- Making regular inspections of, and testing and reporting on, the condition of electrical installations in relevant buildings.

230 The regulator must conduct a review, including a cost-benefit analysis, of the following areas and assess the need to make further provision, under the Building Act 1984, or in guidance, for:

- stairs and ramps in relevant buildings, and
- emergency egress of disabled persons from relevant buildings.
- Automatic water fire suppression systems in relevant buildings.

231 The regulator must prepare reports on the analysis and give them to the Secretary of State, who must then publish them.

Background

232 This is a new provision.

Example

The Building Safety Regulator prepares four individual assessments of measures to improve the safety of people in or about relevant buildings. These may contain recommendations to the Secretary of State to make changes to the Building Regulations and associated guidance. The assessments, including cost and benefit analysis, will then be published.

Enforcement

Section 22: Authorised officers

Effect

233 This section allows the Building Safety Regulator to authorise individuals so that they can exercise specified powers in relation to "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.

234 "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 Act. This excludes the Building Safety Regulator's general functions that do not have an enforcement element.

235 The powers available to authorised officers are found in Schedule 2 of this Act.

Background

236 The power set out in this section 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. Section 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.

237 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 this provision does.

238 The Building Safety Regulator will have discretion in designating different individuals to exercise different sets of powers, 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

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 with 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 individual 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).

Section 23: Authorised officers: offences

Effect

239 This section 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.

240 Each of the offences has a different penalty to reflect the respective gravity of the offence.

241 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

242 This section 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.

243 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.

Section 24: Provision of false or misleading information to the regulator

Effect

244 This section 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 section, this offence is designed to protect the effective functioning and decision-making of the Building Safety Regulator.

245 This section 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 different from a person providing misleading information, so the sentencing options available need to be equally disparate. If tried in a magistrates' court, the offence will carry a maximum penalty of an unlimited fine and/or the maximum term of imprisonment permitted in a magistrates' court as defined in section 29(1), i.e. 12 months (six months until the commencement of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020). If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years' imprisonment.

Background

246 This section, as with section 22, 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: False claim of a building safety risk assessment

In an application to the Building Safety Regulator for a Building Assessment Certificate, an Accountable Person falsely claims that a building safety risk assessment under section 83 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 section 99, but would also be able to take criminal proceedings against the Accountable Person under this section.

Reviews and appeals

Section 25: Review by regulator of certain decisions made by it

Effect

247 This section 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 (for example form, period for submission) of such requests.

248 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.

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

250 This section will operate in conjunction with section 26. 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.

251 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

252 This section 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 Tribunal.

253 This 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.

254 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.

Example

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 to the First-tier Tribunal.

Section 26: Right of appeal: requirement for review before appeal

Effect

255 This section specifies that where a decision by the Building Safety Regulator may be reviewed under section 25, it must first be lodged with the Building Safety Regulator's internal review procedure and concluded before being appealed to the First-tier Tribunal.

256 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.

257 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

258 This section is designed to operate in conjunction with section 25.

Example

The example provided for section 25 is also applicable here.

Supplementary and general

Section 27 (and Schedule 3): Cooperation and information sharing

Effect

259 This section 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. This section makes clear that information sharing gateways created by Schedule 3 over-ride duties of confidence, but do not over-ride data protection requirements.

260 Schedule 3 paragraph 2 creates new duties to cooperate between the Building Safety Regulator and local authorities, the Building Safety Regulator and fire and rescue authorities, and the Building Safety Regulator and FSO authorised persons, which apply in respect of certain statutory functions. The Building Safety Regulator is expected to work particularly closely with these bodies, and sections 13 and 14 specifically provide for these bodies to be able to support the Building Safety Regulator in undertaking certain of its functions.

261 Paragraph 2 also enables "relevant persons" (the Building Safety Regulator, local authorities, fire and rescue authorities and FSO authorised persons) to share information with one another in respect of certain statutory functions. The ability to share information is necessary to enable these bodies to cooperate effectively and to deliver their statutory functions in respect of buildings, for example when working together to deliver the Building Safety Regulator's functions in respect of a higher-risk building.

262 Paragraph 2 enables the Secretary of State, through statutory instrument, to add to the list of "relevant functions" of local authorities and fire and rescue authorities to which these provisions apply. This reflects that there are a particularly wide range of potential operational interactions between the Building Safety Regulator (notably in relation to its responsibility for regulating higher-risk buildings), local authorities and the fire and rescue 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 other authorities would support effective delivery of those agencies' statutory functions.

263 Schedule 3, paragraph 3 creates duties to cooperate and powers to share information 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; and

- the organisations work together in other areas of joint interest such as the production of joint guidance to help residents understand their respective roles and responsibilities.

264 Schedule 3 paragraph 4 enables the Building Safety Regulator and the Secretary of State to share information.

265 Schedule 3 paragraph 5 allows the Building Safety Regulator to share information with the police. The police may use this information only for specified purposes around the prevention, detection, investigation or prosecution of an offence, to support police functions relating to public health or public safety, or in support of national security.

266 Schedule 3 paragraph 6 is comprised of two delegated powers. The first (at paragraph 6(1)), relates to duties to cooperate, and enables the Secretary of State to create new duties to cooperate between the Building Safety Regulator and any public authority. The duty to cooperate would apply to building functions of the regulator and any prescribed function of the public authority. As the Building Safety Regulator's functions relate to England only, the duty to cooperate would only extend to functions of the public authority in England.

267 The second (at paragraph 6(2)) relates to the disclosure of information and enables the Secretary of State to authorise relevant persons (the Building Safety Regulator, local authorities, fire and rescue authorities and FSO authorised persons) to reciprocally share information with another public authority for specified functions in England, with that public authority and the functions covered to be set out in regulations.

268 The purpose of these powers is to enable the Secretary of State, where circumstances require it, to create new duties to cooperate and new information sharing gateways, to ensure that the functions of the various public authorities involved can be discharged effectively. Two circumstances which could justify the use of these powers are:

- If evidence necessitated a change to the scope of the higher-risk regime, such that it is essential that the Building Safety Regulator cooperates with further regulators with overlapping (or otherwise relevant) responsibilities for those buildings.

- If further ombudsman or redress schemes are set up, in addition to those listed in paragraph 3(5) to Schedule 3, where it is important that the Building Safety Regulator and the ombudsman cooperate and are able to share information.

269 The second (at paragraph 6(2)) relates to the disclosure of information and enables the Secretary of State to authorise relevant persons (the Building Safety Regulator, local authorities, fire and rescue authorities and FSO authorised persons) to reciprocally share information with another public authority for specified functions, with that public authority and the functions covered to be set out in regulations.

270 The purpose of this delegated power enables the Secretary of State to create information sharing pathways for relevant persons and any other prescribed public authority to support the effective delivery of their respective functions. Two circumstances which could justify the use of this power are:

- If evidence necessitated a change to the scope of the higher-risk regime, such that it is essential that the Building Safety Regulator cooperates and shares information with further regulators with overlapping (or otherwise relevant) responsibilities for those buildings.
- If further ombudsman or redress schemes are set up, in addition to those listed in paragraph 3(5) to Schedule 3, where it is important that the Building Safety Regulator and the ombudsman cooperate and are able to share information.

Background

271 This section and Schedule 3 are new provisions.

272 The duties to cooperate and powers to share information set out in section 27 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.

273 Schedule 3 paragraph 4 is specifically designed to make it easier for residents to have their safety concerns addressed effectively and 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 the issue.

Example 2: Fire and rescue authorities and the Building Safety Regulator

A 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 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 an urgent safety concern about a faulty fire alarm system that their Accountable Person has not resolved. They do not realise that this should be escalated to the Building Safety Regulator for consideration and investigation and send the complaint to an Ombudsman by accident. The duty of cooperation 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 appropriate for the Ombudsman to consider.

Section 28: Fees and charges

Effect

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

Background

275 This is a new provision.

276 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.

277 This provision should be read alongside section 57, which enables the Secretary of State to make regulations enabling the Building Safety Regulator (and other public authorities) to charge for their functions under the Building Act 1984 and regulations made under it.

> ### Example
> It is expected that regulations would be made under this power to set out fees to be charged to Accountable Persons or other dutyholders for costs incurred regulating against the new more stringent regime for higher-risk buildings in occupation. The fees regulations could provide 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 be used only with the consent of the Secretary of State and in line with Government guidance on charging.

Section 29: Service of documents

Effect

278 This section makes provision for the service of documents (whether physical or electronic) in respect of Parts 2 and 4 of the Act and regulations made under them; service of documents in respect of the Building Act 1984, as amended by Part 3 of the Act, is dealt with in section 94 of that Act (which is itself amended by Schedule 5 to this Act to modernise the provision and take account of the regulator's role as a building control authority).

Background

279 This section makes provision that is essentially the same as section 94 of the Building Act 1984, updated to reflect technological developments related to the electronic service of documents.

Section 30: Interpretation of Part 2

Effect

280 This section provides key definitions used in Part 2 of the Act.

Part 3: Building Act 1984

Building control authorities and building regulations

Section 31: Higher risk buildings etc

Effect

281 The new regulatory regime will regulate "higher-risk buildings". This section inserts sections 120D to 120I into the Building Act 1984. Section 120D defines the "higher-risk buildings", which will be regulated during the design, construction and refurbishments phases of a building's lifecycle by the new regime in England, as at least 18 metres in height or at least 7 storeys and of a description specified in regulations.

282 Section 120D gives the Secretary of State the powers, by regulations to define which descriptions of buildings are "higher-risk buildings" (subsection (2)(b)) and which descriptions of buildings are excluded from the definition of "higher-risk building" (powers used in the way described by (4)(c)). Regulations made under these powers are subject to the affirmative resolution procedure, i.e. they must be laid in draft, debated and approved in both Houses of Parliament before they can be made.

283 Section 120D, at subsection (3), also gives the Secretary of State the power, by regulations, to supplement the definition for example, by defining "building" or "storey" or describing how the height of a building should be measured. Subsection (5) provides that the definition of "building" in regulations may include other structures, erections or movable objects. The ability to have a broad definition aligns with section 121 of the Building Act 1984. Regulations made under this power are subject to the negative resolution procedure.

284 Section 120D gives the Secretary of State the power to amend section 120D apart from subsections (1), (3) and (6). This power could be used, for example, to amend the height criteria for the definition of "higher-risk building". Regulations made under this power are subject to the affirmative resolution procedure, i.e. they must be laid in draft, debated and approved in both Houses of Parliament, before they can be made.

285 When making regulations to amend the definition of "higher-risk building", this can be done by reference to a building's size, design, use, purpose or other characteristic (section 120A of the Building Act 1984, inserted by paragraph 77 of Schedule 5 to this Act).

286 Section 120E stipulates that the Secretary of State must consult the Building Safety Regulator and any other appropriate persons before making regulations under section 120D. The Secretary of State does not need to consult the Building Safety Regulator if they have received a recommendation or requested advice from the Regulator.

287 Section 120F further stipulates that when the Secretary of State proposes to make regulations which would result in a description of building being added to the definition of "higher-risk building", and therefore subject to the new design and construction regulatory regime for higher-risk buildings, they must have received a recommendation from the Regulator to that effect, or asked the regulator for advice, and they must undertake and publish a cost benefit analysis. If the costs or benefits cannot be reasonably or practicably estimated, then the Secretary of State must provide an explanation of this.

288 Section 120H sets out what the Regulator must do if the Secretary of State asks it for advice about the definition of "higher-risk building". The Building Safety Regulator is obliged to provide such advice on request.

289 If the Building Safety Regulator is asked to provide advice on whether a new description of building should be added to the definition of "higher-risk building", it must consider whether the conditions at subsection (2) (a) - (c) of this section 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, 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) and that the Regulator considers it appropriate for the regulatory regime to apply.

290 If the Building Safety Regulator considers the conditions are met, it must recommend to the Secretary of State that the new description of building is added to the definition of "higher-risk building" and provide a statement of the issues it considered alongside the recommendation.

291 If the Building Safety Regulator considered the conditions are not met, they must provide advice that the new description of building should not be added to the definition of "higher-risk building" and provide a statement of the issues it considered.

292 Section 120H also sets out that the Building Safety Regulator must provide advice as to whether a description of building should be removed from the definition of "higher-risk building", if the Secretary of State requests it.

293 Section 120G provides that the Building Safety Regulator must recommend to the Secretary of State that a particular description of building should be subject to regulation under the regime if the conditions at subsection (1) (a) - (c) of this section are met. These are the same conditions as specified in section 120H. In making such a recommendation under section 120G, the Building Safety Regulator must provide the Secretary of State with a statement of the issues considered.

294 Under section 120G (4), the Building Safety Regulator may also recommend the removal of a description of higher-risk building from the regulatory regime.

295 If the Secretary of State chooses not to follow a recommendation of the Building Safety Regulator, then sections 120G and 120H specify that they must publish a document which sets out the regulator's recommendation, the Secretary of State's decision not to follow the recommendation, and the reasons for that decision.

Effect in Wales

296 Section 120I confers power on the Welsh Ministers to define "higher-risk building" in Wales, and defines "higher-risk building work" which includes circumstances where work causes a building to become a higher-risk building or to cease to be a higher-risk building. It also provides a power to define "building" to ensure that the Welsh Ministers can add clarity to the definition of "higher-risk building" as required; this mirrors the equivalent provision for the Secretary of State in England, in section 120D(4)(a) and (5).

Proposed use of power

297 At the start of the new regulatory regime, it is proposed to supplement the definition of "higher-risk building" for England.

Background

298 This is a new provision.

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

300 Following pre-legislative scrutiny, the Housing, Communities and Local Government Committee recommended including the definition of "higher-risk building" within the Act, rather than in regulations.

Example

The following example is purely hypothetical.

After the new design and construction regime has been operating for two years, the Secretary of State may decide that consideration is needed as to whether single storey premises in areas of high flood risk should be higher-risk buildings because of a concern about structural failure following recent flooding incidents.

If the Secretary of State came to this view, they must request advice from the Building Safety Regulator. The Building Safety Regulator must consider whether single storey premises in areas of high flood risk meet the three conditions specified in this section 120H(2).

In this hypothetical example, the Regulator considers the conditions are met. The Regulator must then make a recommendation to the Secretary of State to amend the definition of a "higher-risk building" and provide a statement of the issues it considered in coming to that recommendation.

Having considered the recommendation, the Secretary of State may be minded to agree and make regulations to amend the definition of "higher-risk buildings". They must then consult other appropriate persons and undertake a cost benefit analysis, if they have not already done so whilst requesting advice from the Regulator. Having considered the recommendation, the representations made and the cost benefit analysis, the Secretary of State will decide whether to amend the definition of "higher-risk building".

If the Secretary of State chooses to make the amendment, the regulations will be laid in Parliament using the affirmative procedure. If the Secretary of State chooses not to make the amendment, then the Secretary of State must publish a document setting out the Regulator's recommendation, their decision not to implement it and the reasons for their decision.

Section 32: Building control authorities

Effect

301 This section amends section 91 of, and inserts new sections 91ZA, 91ZB, 91ZC and 121A into, the Building Act 1984 to set out, for England, the arrangements where the Building Safety Regulator is the building control authority, and to define higher risk building work (see below as to Wales).

302 The amendments to section 91 for England 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.

303 Section 91ZA(1) provides that, in England, the Building Safety Regulator is the building control authority for work on higher-risk buildings, or for work on buildings which are to be higher-risk buildings, (higher-risk building work). Therefore, it is responsible for supervising building work and enforcing compliance with building regulations' requirements for those buildings.

304 Section 91ZA(2) provides that, in England, 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. Section 91ZA(3) defines (for England) building work for which the Building Safety Regulator is the building control authority as higher-risk building work.

305 Section 91ZB enables, in England, the person undertaking the work to issue a notice to the relevant local authority in agreement with the Building Safety Regulator, so 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 neither a building control application has already been made to a local authority nor an initial notice nor a public body's notice has already been issued (subsection (3)).

306 Section 91ZC makes supplemental provision to section 91ZB. In particular, subsections (2) – (4) provide that regulators' notices can be rejected only on grounds prescribed in building regulations; that a notice of rejection must be issued within a prescribed period, otherwise the regulator's notice is treated as being accepted; and that rejection of a regulator's notice may be appealed. 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.

307 This section also inserts new section 121A(1) into the Building Act 1984 to make clear that, in England, 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 used for all of the new references to "building control authority" being inserted into the Building Act 1984.

308 Schedule 5 makes consequential amendments to the Building Act 1984.

Effect in Wales

309 This section also applies to Wales and inserts new sections 91ZD and 121A into the Building Act 1984.

310 The insertion of section 91ZD for Wales provides a power for the Welsh Ministers, in building regulations, to designate an alternative local authority to act as building control authority where the local authority for the area proposes to carry out higher-risk building work. This is to avoid the risk of a conflict of interest where the local authority would otherwise be both developer and regulator on a higher-risk building.

311 New section 121A defines building control authorities and local authority for the purpose of the definition of building control authority in 121A(1), to confirm that the designated local authority is the building control authority for work in relation to which it has been designated.

Background

312 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.

313 In England, 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, for instance through 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.

314 Also, there will be multi-building sites in England 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.

315 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.

316 The regulator's notice provides the mechanism for doing this in England.

317 Section 91 of the Building Act 1984 applies equally to Wales.

318 In Wales the local authority for the area, or as designated by Welsh Ministers under building regulations, will be responsible for all building regulations matters when building work is undertaken on higher-risk buildings including similarly for work which leads to a building becoming or ceasing to be a higher-risk building.

319 For multi-building sites in Wales comprising both higher-risk buildings and non-higher-risk buildings although the developer may choose either a local authority or registered building control approver as the building control body for the non-higher risk building, the developer may choose to utilise the designated local authority for the whole site.

Example

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 be issued only 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 very limited grounds for rejecting a regulator's notice on procedural grounds (for instance 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. 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.

Section 33: Building regulations

Effect

320 This section 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 those certificates and schemes including insurance (new paragraph 1C);

- requirements on giving, obtaining or keeping of information or documents (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 (new paragraph 1G);
- powers for 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).

321 The Building Safety Regulator will be the building control authority for higher-risk buildings and buildings covered by a regulator's notice in England (see section 32), new sections 91ZA and 91ZB), and local authorities will be the building control authority for other buildings; in some cases the building control authority in Wales will be a designated local authority, rather than the local authority for the area in question (see section 32, new section 91ZD).

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

323 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 plans or issue of a building notice. Procedures for these are currently set out in Part 3 of the Building Regulations 2010 as amended. This section will provide the powers to make changes to these existing requirements, including the information to be provided, consultation with fire and rescue authorities and sewerage undertakers, building control approvals, including with requirements, notification of when stages of work commence, and issue of completion certificates when work has completed.

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

Effect in Wales

325 This section will apply equally in Wales with the exception that rights of appeal are to the Welsh Ministers or a magistrates' court or in some cases to the High Court.

Proposed use of powers

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

327 Regulations under paragraph 1B will make provision for prescribed documents to be submitted with an application for building control approval, and also provide building control authorities with 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 changes which occur during construction. Building control applications for refurbishment of higher-risk buildings will require plans and prescribed documents proportionate to the proposed refurbishment. Paragraph 1B(5) enables building regulations to set out the requirements for building control applications for the refurbishment of higher-risk buildings in England. Building control authorities will have the ability to request further information and refuse applications where the applicant fails to provide these. 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 including the prescribed documents to be submitted with an application, staged approvals, and change control requirements.

328 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, the time periods for approvals; and arrangements for any prescribed insurance cover which members of schemes must hold, including that cover is provided by a scheme approved by the appropriate national authority (the Secretary of State in England and Welsh Ministers in Wales). For example, regulations might also set out the types of work for which certificates can be provided and the procedure for notifying building control authorities of work covered by certificates, as in the current Building Regulations. 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.

329 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. In England it is proposed to use this power to require those designing and constructing higher-risk buildings to develop a golden thread of information to prescribed standards. These prescribed standards are to ensure the information is accessible, accurate, up to date, transferable, secure and has longevity. For example, building information such as plans and prescribed documents submitted at Gateways two and three will need to be stored in the golden thread in a way that meets the prescribed standards. Regulations under this provision may give building control authorities or other prescribed persons the power to require documents and information to

be shared with them in certain circumstances. Building regulations under this section will define the prescribed circumstances where information must be shared and the prescribed persons it must be shared with in these circumstances.

330 Dutyholders will also be required to report information about safety incidents taking place during building work as part of mandatory occurrence reporting. The safety related incidents amounting to reportable occurrences will be prescribed in secondary legislation. Paragraph 1D gives the power to require reporting and the power to limit the admissibility of information acquired through such reporting in criminal proceedings, equivalent to the limitations set out in section 89(6). Paragraph 1E contains the power to require mandatory occurrence reporting frameworks to be established and operated by dutyholders. Regulations will require establishment and operation of a framework, according to prescribed requirements, that will enable workers on-site to report potential occurrences. In England, Principal Designers and Principal Contractors will be required to use this information to report structural and fire safety occurrences which could cause a significant risk to life safety in higher-risk buildings to the Building Safety Regulator.

331 In England it is proposed to require prescribed documents such as a fire and emergency file and construction control plan with certain building control applications for higher-risk buildings using powers in paragraph 1B. Where building regulations provide that any document or information may or must be given, the powers in new paragraph 1F will be used to 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 contains powers to require that the information and documents created and managed by dutyholders 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 in England 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) gives the power to set out in building regulations the prescribed documents that must be submitted with certain prescribed applications. In England, the intention is that the prescribed applications will be certain applications for the refurbishment of higher-risk buildings. 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.

332 When checking work, building control authorities may need to undertake tests or take samples of building materials. It is proposed to use the powers in new paragraph 1G to make provision in building regulations relating to the testing and sampling of work or the building, prohibit the covering up of work within a prescribed time period after a specified event, and allow for the cutting into, laying open of the work or building, or for the pulling down of work in order to test or sample it. For example, in order to check compliance a building control authority may specify that foundations should not be covered over for a period of time, to enable the depth of the foundations to be checked; or may wish to check that cavity barriers have been installed properly before the external cladding is installed, and they are covered up.

333 Building regulations will set prescribed timescales within which building control authorities will need to determine applications for building control approval and other applications. There will be projects where it will not be possible to review all the documents and make a decision within the prescribed timescale. Paragraph 1H will allow 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. In England it is proposed to use this power to provide for prescribed timescales for the following applications: Gateway two, change control, Gateway three and refurbishment of higher-risk buildings.

334 New paragraph 1I will enable persons directly impacted by decisions of building control authorities under building regulations to appeal such decisions. For example, where the Building Safety Regulator refuses a building control application for a higher-risk building such as at Gateway two, change control, Gateway three and refurbishment, there will need to be a route of appeal.

Background

335 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 subsequently 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.

336 It also recommended that dutyholders across the building's lifecycle be required to report safety concerns to the Building Safety Regulator as part of a mandatory occurrence reporting regime.

337 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. These provisions are considered to be insufficient to implement the tightened controls needed for higher-risk buildings and so new provisions will be made in regulations for gateways and refurbishment procedures using the powers provided in section 32.

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

339 Sections 16 and 17 of the Building Act 1984 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 (although no persons have been approved under this power).

340 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 Secretary of State and are listed in Schedule 3 of the Building Regulations 2010.

Example: Golden thread of information

An architect has designed a residential tower block that will be 25 metres high. The architect's plans for the building form part of the information that will be required by the Building Safety Regulator at gateway two. This information will therefore need to be stored in the golden thread and meet the golden thread standards

Example: Mandatory occurrence reporting

During the construction of a residential tower block, a worker identifies compatibility issues between the insulation and intumescent sealant being installed around copper piping on-site. In the event of a fire, the expanding sealant would deform the insulation and potentially compromise compartmentation. The incompatibility was not spotted during design or during standard internal reviews, and the two products have been installed together numerous times on-site. This presents a systemic and significant risk to life safety.

The worker reports this to the Principal Designer and Principal Contractor who immediately inform the Building Safety Regulator that a mandatory occurrence has been identified. The Principal Contractor and Principal Designer then ensure that a full report is submitted to the Building Safety Regulator as soon as is practicable and no later than ten days from the occurrence being identified.

Upon receiving the report, the Building Safety Regulator can use the intelligence within to identify any trends of similar such incidents across the sector and share this and other valuable lessons learned within the report with industry. In this way the report enables the Building Safety Regulator to help professionals across the sector proactively identify and resolve similar issues on their own sites, mitigating previously unknown risks and improving best practices across the built environment. The Building Safety Regulator can also, at its own discretion, use such a report as a basis for further investigative or enforcement action.

Section 34: Dutyholders and general duties

Effect

341 This section 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.

342 This section 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.

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

344 The provisions in this section will replace an existing power in 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).

Effect in Wales

345 This section will apply equally in Wales. Welsh Ministers intend to set out in secondary legislation requirements for principal dutyholders.

Proposed use of this power

346 The power provided by this section, 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 requirements for dutyholders to cooperate and share information and to ensure compliance with building regulations.

347 In England, the Government intends to use the powers in paragraphs 5A and 5B to provide that the client can treat those persons appointed as a Principal Contractor or Principal Designer under the Construction (Design and Management) Regulations 2015 (CDM) as appointed for the purposes of the building regulations. In order to do this, it is proposed that the client should certify that the CDM person has the appropriate skills, knowledge, experience and behaviours to undertake the equivalent role under the building regulations.

Background

348 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.

349 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.

350 Regulations made under this provision in England 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.

Section 35: Industry competence

Effect

351 This Section 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 design or building work on all buildings.

352 The Principal Designer, Principal Contractor, designers and contractors can be an organisation or an individual. Sub-paragraph (2) makes clear 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.

353 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.

Effect in Wales

354 This section will apply equally in Wales with the same expectations of skills, knowledge, experience and behaviours relevant to the work in question.

Proposed use of this power

355 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. For any design or building work on all buildings in England, it is intended 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.

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

357 In England, the Government intends to provide statutory guidance 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, knowledge, experience and behaviours 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. Over time, it is expected that the built environment industry will develop sector-specific competence frameworks, which could, if sufficiently rigorous, be recommended and adopted in statutory guidance. It is expected that the competence committee (see section 10) will advise on this point.

Related provisions

358 Section 33 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 in England. This will include as part of the Gateway two application, a signed declaration from the Client that they are content with the competence of the Principal Designer and Principal Contractor, and the evidence of the Client's assessment process for the competence of the Principal Designer and Principal Contractor.

Background

359 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).

360 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.

361 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

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 buildings.

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, being assessed by an accredited organisation as meeting the competence standards for the Principal Designer and having relevant experience working on the same type of buildings. 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.

Section 36: Lapse of building control approval etc

Effect

362 This section 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. New section 32(5) ensures that certain things which the person carrying out the work had to do when they made their original application, for instance to pay a fee or supply certain information, are not undone.

363 This section 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.

364 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 an initial notice ceasing to have effect do not apply if an initial notice lapses under section 53A.

365 Provision in new subsections 32(6), 53A(6) and paragraph 4A(6) inserted by this section allows building regulations to define when work commences for the purposes of lapse of approval.

Effect in Wales

366 This section will apply equally in Wales.

Background

367 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.

368 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

Building control approvals, 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 approval has no effect, or to cancel the notice. 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, even if work on the remainder of the site has commenced.

Section 37: Determination of certain applications by Secretary of State or Welsh Ministers

Effect

369 This section provides that where the building control authority 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 appropriate national authority for a decision on the original application within a prescribed time period. The building control authority will not be able to continue determining the original application once an application has been made to the appropriate national authority for a decision in these cases. In England, the building control authority for higher-risk buildings will be the Building Safety Regulator and the appropriate national authority will be the Secretary of State (see below as regards Wales).

370 The appropriate national authority can appoint a person to determine these applications. Provisions will be made in building regulations for a person appointed to be able to determine the original application, including conferring functions on them and on the effect of their decisions. The appropriate national authority, 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 control authority. They may for example impose requirements on approval of an application using powers under building regulations made under section 33 of this Act.

371 Subsection (5) provides powers to make provision about these applications in building regulations. General procedural matters with regard to these applications will be set out in building regulations, for example 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 control authority in relation to these cases, such as requiring applicants to notify the building control authority when they submit an application to the appropriate national authority and requiring the building control authority to provide relevant documents to the appropriate national authority.

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

Effect in Wales

373 In Wales, failure by the building control authority (being the local authority for the area or one designated by Welsh Ministers) to decide an application for a higher risk building will allow an application to Welsh Ministers for a decision on the application.

374 Applicants in Wales will be able to appeal decisions of the Welsh Ministers to a magistrates' court.

Proposed use of power

375 In England, it is intended to use the power in section 37 to provide for the following applications to be determined by the Secretary of State, if the Building Safety Regulator does not take a decision in time: Gateway two, change control, Gateway three, and refurbishment of higher-risk buildings.

Background

376 Currently developers can start building work when they have deposited plans and given the local authority notification of commencement or submitted a building notice. The new regime will require building control approval to be obtained before starting most kinds of building work on higher-risk buildings, and it will be an offence to undertake most higher-risk building work without first having building control approval. To minimise the risk of causing undue delays to construction, applicants will be able to apply to the appropriate national regulator for a decision in cases where the prescribed timescale for the building control authority to make a decision has passed with no extension agreed.

Section 38: Compliance and stop notices

Effect

377 Subsection (1) of this section enables the building control authority (i.e. the 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.

378 A compliance notice (new section 35B) can be served on a person who is contravening, or is likely to contravene, building regulations or a requirement imposed under 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.

379 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 in England 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 section 33 of this Act and relate only to higher-risk buildings.

380 In line with the existing enforcement protection in section 36(5) of the Building Act 1984, new section 35D(4) sets out that compliance notices and stop notices under section 35C(1)(a) 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)(b) or (c). This is because, for subsection (1)(b), the protections would prevent a compliance notice being issued, so it could not be breached; and, for subsection (1)(c), the level of danger present ("the risk of serious harm condition") means that the protections are inappropriate.

381 These notices will be appealable to the First-tier Tribunal in England and the magistrates' court in Wales (subsection (2), inserting new section 39A into the Building Act 1984). Appeal of a compliance notice will suspend the effect of the notice itself. 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 or magistrates' court for the effect of a stop notice to be suspended pending appeal).

382 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 in a magistrates' court, the offence will carry a maximum penalty of an unlimited fine and/or the maximum term of imprisonment permitted in a magistrates' court, which is defined in section 126 of the Building Act (as amended by paragraph 81 of Schedule 5 to this Act) as 12 months (six months until the commencement of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020). If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years' imprisonment.

Effect in Wales

383 In all situations, the power to issue and enforce stop and compliance notices will rest with the building control authority, being the local authority for the area or one designated by Welsh Ministers by virtue of regulations under new section 91ZD of the Building Act, inserted by section 32(3). Appeals against stop and compliance notices will be to a magistrates' court in Wales.

Background

384 This section introduces new powers for building control authorities to enhance their ability to address non-compliance with building regulations without resorting to criminal prosecution.

385 Stop notices are being introduced as, before this Act, 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.

386 These measures have been modelled on notices under sections 21 and 22 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 in England, 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 in England 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) of the Building Act 1984 to 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 the stop notice will be a criminal offence.

Section 39: Breach of building regulations

Effect

387 Subsection (2) of this section replaces the existing summary-only, fine-only offence in section 35 of the Building Act 1984 (penalty for contravening building regulations), making it triable either way, and also providing for imprisonment as a possible sentencing option –

for the maximum term of imprisonment permitted in a magistrates' court, as defined in section 126 of the Building Act, as amended by paragraph 80 of Schedule 5 of this Act, i.e. 12 months (six months until the commencement of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020), or an unlimited fine. If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years' imprisonment. The substituted version of section 35 also increases the maximum daily fine from £50 to level 1 on the standard scale (currently £200), reflecting inflation since 1984, when a Level 1 fine was £50.

388 In addition, new section 35(1) 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. Subsection (2) retains the existing power to exclude provisions of building regulations from the offence in section 35; the existing power has been used to make regulation 47 of the Building Regulations 2010. Subsection (3) provides for the building regulations 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.

389 Subsection (3) of this section amends section 36 of the Building Act 1984 (notice requiring rectification of non-compliant work) to extend the time limit during which rectification in respect of a contravention of building regulations can be required from twelve months to 10 years.

Effect in Wales

390 This section will apply equally in Wales.

Proposed use of power

391 As part of the new building safety regime dutyholders will be required to report certain matters taking place during design and construction, as part of a mandatory occurrence reporting regime. The power created by new section 35(2) to the Building Act 1984 is intended to be used in England 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 will 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.

Background

392 Alongside section 38, this section provides stronger sanctions for use by building control authorities against those who seek to breach building regulations. This follows Dame Judith Hackitt's finding in her foreword to the Independent Report that one of the key issues underpinning the failure of the Building Safety Regulatory system that led to the Grenfell Tower fire was that there was "Inadequate regulatory oversight and enforcement… Where enforcement is necessary, it is often not pursued. Where it is pursued, the penalties are so small as to be an ineffective deterrent".

> Example
> 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.

Section 40: Liability of officers of body corporate

Effect

393 This section 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. Section 161 makes a similar provision in respect of the criminal offences in Parts 2 or 4 of this Act.

Effect in Wales

394 This section will apply equally in Wales.

Background

395 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.

396 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 section should be to bring home the importance of building safety responsibilities to those directing companies.

397 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.

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

> **Example**
> 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.

Section 41: Revocation of certain provision made under section 2(2) of ECA 1972

Effect

399 This section provides powers for building regulations to revoke provisions in building regulations which were made using powers in section 2(2) of the European Communities Act 1972. In common with the usual procedure for building regulations, this will use the negative resolution procedure.

400 Section 41(1) treats building regulations made using powers in both the Building Act 1984 and s2(2) of the European Communities Act as a "combined instrument". Section 40(2) provides powers for building regulations to revoke provision in a combined instrument.

401 Section 41(3) also disapplies paragraphs 13 and 14 of Schedule 8 to the European Union (Withdrawal) Act 2018 in respect of any regulations which amend provision in a combined instrument. This will mean that any such regulations will be made using the negative resolution procedure rather than the affirmative procedure, and the publication in draft procedure will be disapplied.

Effect in Wales

402 Subsections (1) and (2) of this section apply in Wales. Paragraphs 13 and 14 of Schedule 8 to the European Union (Withdrawal) Act 2018 do not apply to statutory instruments made by the Welsh Ministers, so subsection (3) does not apply in Wales.

Background

403 Building regulations (specifically, the energy efficiency requirements in Part 6 and Part L of Schedule 1, and the broadband requirement in Part R of Schedule 1) have been used to implement provisions in EU legislation, particularly the Energy Performance of Buildings Directive (EPBD) and Article 8 of the Broadband Cost Reduction Directive.

404 The power to revoke these regulations in full was lost at the end of the implementation period, with the repeal of section 2(2) European Communities Act. Without the ability to revoke these provisions in building regulations, the Government would be constrained in its ability to update and improve the legislation, which could never be fully revoked, for instance in a consolidation exercise.

405 The European Union (Withdrawal) Act 2018 envisages that over time EU retained legislation will need to be amended or revoked, as it is replaced by new domestic legislation, and section 41 has been included for this purpose.

406 Paragraphs 13 and 14 of Schedule 8 to the EU Withdrawal Act set out procedure to be followed in legislation which amends or revokes certain retained EU law including that regulations should follow the affirmative procedure, and a requirement for pre-publication of the regulations.

Example

The building regulations will need to be updated in the light of the changes being made in the Building Safety Act. As part of this exercise, the Government will also be giving careful consideration to the merits of consolidating the significant number of amendments which have been made to the regulations in recent years. The ability to revoke the existing regulations and replace them with new regulations is necessary to enable this to be done. Without the power in subsection (2) of section 41, there would be an anomalous position, in that building regulations made under section 2(2) of the European Communities Act could not be included in any exercise to update and consolidate the building regulations and could never be revoked.

The Government has consulted on proposals to introduce the Future Homes Standard and Future Buildings Standard to improve the energy efficiency and sustainability of new homes and buildings. This will require changes to building regulations including, potentially, those which implemented provisions in the EPBD; these changes may, in the absence of subsection (3) of section 41, engage the pre-publication and affirmative resolution procedure. The established procedure in the Building Act 1984 is for changes to building regulations, including the energy efficiency requirements, to be made following the negative resolution procedure.

Building control approvers and building inspectors

Section 42: Regulation of building control profession

Effect

407 This section amends the Building Act 1984 by inserting a new Part 2A into the Act 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 section 6(2).

408 In future, the Building Safety Regulator and each local authority (to be collectively known as building control authorities, as defined in section 32) 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. They will also be required to use a registered building inspector to carry out restricted activities (such as building control inspections).

409 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 regulatory authority (the Building Safety Regulator in relation to England, and the Welsh Ministers in relation to Wales). Local authorities are not being required to register as they are the default building control authority in an area and are already subject to intervention powers (including the Secretary of State having the power to transfer their building control functions to another local authority or to the Secretary of State) where they are failing (see section 116 of the Building Act 1984, as amended by section 45).

410 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 building control 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).

411 New sections 58B to 58D set out the requirements for the registration of individuals as registered building inspectors by the regulatory authority. The new sections provide for the regulatory authority to publish the criteria for registration, an application procedure and enables the regulatory authority to grant registration with restrictions (for instance as to the type of buildings on which an inspector can give advice) or subject to conditions (for instance requiring regular training) and for the Secretary of State (and Welsh Ministers in Wales) to set, in regulations, the length registrations are valid (for instance five years).

412 New sections 58E to 58M 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 regulatory authority will publish a code of conduct for 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 or carrying out a restricted activity on a type of building which is outside the restrictions specified on their registration or providing advice or carrying out a restricted activity whilst suspended. It also sets out a new offence of impersonating a registered building inspector with intent to deceive.

413 New sections 58N to 58P set out the requirements for the registration of persons (i.e. organisations or individuals) as building control approvers by the regulatory authority. The new sections provide for the regulatory authority 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 (for instance as to the type of buildings the registered building control body can work) or subject to conditions, and for the Secretary of State (and Welsh Ministers in Wales) to set, in regulations, the length of registrations.

414 New sections 58Q to 58X set out more detail on the ongoing regulation of registered building control approvers including applying for a variation or cancellation of registration, that the regulatory authority will publish professional conduct rules, a power for the regulatory authority 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 regulatory authority that it has been suspended) and (2) of impersonating a registered building control approver with intent to deceive.

415 New section 58Y enables the regulatory authority to designate some or all of functions under sections 58B to 58X to be undertaken by another body.

416 New section 58Z enables the regulatory authority 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 regulatory authority must publish the rules and may revise and republish these rules from time to time.

417 New section 58Z1 enables the regulatory authority 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. This could include periodic data reporting. 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.

418 New section 58Z2 enables Welsh Ministers 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.

419 New section 58Z3 enables the regulatory authority to investigate a local authority or registered building control approver if they may have failed to meet the operational standards rules. The regulatory authority 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 regulatory authority may revise and publish the revised statement at any time.

420 New section 58Z4 allows the regulatory authority 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. In England, 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.

421 New section 58Z5 allows the regulatory authority 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 regulatory authority may also issue a serious contravention notice if an improvement notice has been breached. The purpose of the serious contravention 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. In England 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 Tribunal. A person who contravenes the notice commits an offence and is liable to pay a fine.

422 New section 58Z6 - If the regulatory authority 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 regulatory authority may cancel the building control approver's registration. The regulatory authority 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 regulatory authority 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.

423 New section 58Z7- If the Building Safety Regulator has given a local authority one or more serious contravention notice 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 authority's 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.

424 New section 58Z8 confers a power on the regulatory authority to inspect local authorities and registered building control approvers, in relation to their building control functions. The reasons for carrying out inspections includes ascertaining the efficiency and effectiveness of a building control body, or for verifying information provided to the regulatory authority by a building control body.

Effect in Wales

425 The provisions relating to the registration and ongoing regulation of building inspectors and building control approvers will apply in Wales save that "regulatory authority" in Wales will be the Welsh Ministers. Section 58Y enables the regulatory authority (being the Welsh Ministers for Wales) to delegate some or all of the regulatory authority's registration functions under sections 58B to 58X to be undertaken by another person. The power to set and oversee operational standards for both approvers and local authorities in Wales will rest with Welsh Ministers as the regulatory authority. This includes powers to require the provision of periodic and particular information, investigative powers, the issue of improvement and contravention notices, and inspections. Welsh Ministers will have powers in relation to the deregistration of an approver in the face of significant contravention (powers to transfer local authority functions already exist in the current act).

Background

426 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 regulatory authority demonstrating how they meet the published criteria. The criteria set by the regulatory authority may include measures of competence, being a fit and proper person, previous experience etc. Upon reviewing the application, the regulatory authority 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 (for instance a 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 regulatory authority's criteria for registration as a building control approver. After reviewing the application, the regulatory authority 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 58Z - The regulatory authority 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 regulatory authority 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 58Z1 - The regulatory authority 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 regulatory authority, 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 58Z2 - Welsh Ministers require information from a registered building

control approver in relation to its building control functions. The Welsh Ministers provide 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 58Z3 - The regulatory authority receives a complaint that a local authority has failed to meet the operational standards rules in the exercise of their building control functions. The regulatory authority decides to investigate the local authority. The regulatory authority 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 58Z4 - Following an investigation, it is established that the operational standards rules have been breached by local authority. To remedy the situation, the regulatory authority serves an improvement notice on the local authority together with a statement of reasons explaining why the notice has been served. In England the Building Safety Regulator also provides copies to the Secretary of State. The regulatory authority 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 58Z5 - 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 regulatory authority serves a serious contravention notice on the local authority together with a statement of reasons to explain why the notice has been served. In England the Building Safety Regulator also provides copies to the Secretary of State. The regulatory authority 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 does not appeal the notice to the First-tier Tribunal. The local authority reads the statement of reasons and understands why the decision has been made to serve the notice. 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 58Z6 - The regulatory authority has given a registered building control approver a serious contravention notice, and the approver appears to be continuing to exercise their building control functions below the expected standard, putting the safety of persons at risk. The regulatory authority considers that the appropriate next step is to cancel the approver's registration. The regulatory authority notifies the approver that it is considering taking such action and explains its reasons. The approver is invited to make any representations within 14 days in respect of this proposed action. After representations have been made, the regulatory authority considers it appropriate to proceed to act and it notifies the approver that it has done so and provides a statement explaining why the decision has been taken. The regulatory authority also notifies each local authority in England. The approver chooses not to appeal the decision to the First-tier Tribunal.

Section 58Z7 - The Building Safety Regulator has given a local authority in England 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.

Section 43: Transfer of approved inspectors' functions to registered building control approvers

Effect

427 Part 2 of the Building Act 1984 currently provides for Approved Inspectors (including organisations and individuals) to supervise building work. This section, and Schedule 4, 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. Current "Approved Inspectors" (i.e.

organisations) wishing to undertake building control work will have to meet minimum criteria to become registered as building control approvers, becoming subject to the oversight of the regulatory authority (the Building Safety Regulator in relation to England, and the Welsh Ministers in relation to Wales).

428 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 building control 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).

429 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 section 45) where a local authority is failing, its building control functions can be transferred by the Secretary of State to another local authority.

430 Schedule 4 amends references to "Approved Inspector" in the Building Act 1984 to "registered building control approver". Paragraph 12 of the Schedule amends an existing requirement for notification by the magistrates' court. Currently under section 57(3) of the Building Act 1984 the court has to notify the approval body (ie CICAIR), after the amendment the court will need to notify the relevant authority (ie Building Safety Regulator in relation to England or Welsh Ministers in relation to Wales, or the body delegated).

Effect in Wales

431 This section and Schedule 4 will apply equally in Wales.

Background

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

Example

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.

Section 44: Functions exercisable only through, or with advice of, registered building inspectors

Effect

433 This section amends the Building Act 1984 to insert new sections 46A and 54B.

434 In relation to building control authorities (defined in section 120A as the Building Safety Regulator and the relevant local authority (section 120A was inserted into the Building Act 1984 by section 32)), section 46A provides that prescribed building control functions will be specified as functions which building control authorities will only be able to carry out having first obtained and considered the advice of a registered building inspector. New section 54B makes the same provision in relation to registered building control approvers. The purpose of these provisions is to ensure that the Building Safety Regulator, local authorities and registered building control approvers take advice from individuals who have demonstrated relevant expertise before important building control decisions are taken. These restricted functions will be set out in secondary legislation.

435 In relation to building control authorities, new section 46A provides that building control authorities must only carry out certain restricted activities through using an appropriately registered building inspector. These activities will be set out in secondary legislation and is likely to include activities like formal building control inspections. New section 54B makes the same provision in relation to registered building control approvers. The purpose of these provisions is to ensure that individuals who have demonstrated relevant competence are carrying out the important activities that are part of the building control process.

436 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 section 32) 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. It is intended that the specified functions of a building control authority will be broadly equivalent to those of a registered building control approver.

437 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. 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. Some examples of registered building control approver functions that could be specified in secondary legislation include sending initial notices and issuing plans and final certificates.

438 This section 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 and to use an appropriately registered building inspector to carry out restricted activities on their behalf. If a registered building control approver breaches these requirements it can be prosecuted and, if found guilty, fined. For building control authorities, in the case of failure to use a registered building inspector to carry out restricted activities or to seek advice from a registered building inspector, their building control decision could be called into question and subject to judicial review for failing to follow the legislative process.

Effect in Wales

439 This section will operate similarly in Wales such that some building control authority functions will be specified as functions which building control authorities (defined as relevant local authorities for Wales) or registered building control approvers will only be able to carry out having first obtained and considered the advice of a registered building inspector. For higher-risk buildings the relevant local authority will be the building control authority, not the Building Safety Regulator.

Background

440 This section 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. Some local authorities will have an in-house team who will provide all such advice, but some local authorities who do not have significant amounts of certain building developments may obtain this advice from the inspector employed in another local authority or in the private sector. 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 and giving building control approval 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 whether the work to create a higher-risk building shown in the Gateway two application (the proposed plans etc.) complies with the technical requirements of the building regulations. The Building Safety Regulator will then consider the registered building inspector's advice before making a decision on whether or not to grant building control approval.

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 whether the building work shown in the proposed plans complies with the technical requirements of the building regulations. The registered building control approver will then consider the registered building inspector's advice before making a decision on whether or not to issue the plans certificate.

Example 4: Restricted Activities

A registered building control approver wishes to carry out an inspection to check for compliance of an element of the work with the technical requirements of the building regulations. Where such an inspection is a prescribed activity, the registered building control approver must use a registered building inspector who has the appropriate registration type for the building work and building to be inspected, to carry out the inspection.

Section 45: Default powers of appropriate national authority

Effect

441 This section amends sections 116 to 118 of the Building Act 1984. The existing sections 116 to 118 apply in England and Wales, some of the amendments in this section are clarifying what powers the Welsh Ministers already have had transferred to them. Section 116 provides that if the appropriate national authority (i.e. in England, the Secretary of State or in Wales, Welsh Minsters) is satisfied that a local authority has failed to perform their functions under the Act, it 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 appropriate national authority may make a transfer order to assign to itself specified building control functions belonging to the body in default. The substantive change made to section 116 by this section is to provide that in England, the Secretary of State must first consult the Building Safety Regulator before making any orders. 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.

442 This section also amends section 117 of the Building Act 1984. The effect of the amendments is to restate that the Secretary of State's expenses incurred in carrying out functions transfer to him under section 116 can be paid from money provided by Parliament. Further the amendments restate that the amount of expenses incurred by the appropriate national authority is recoverable as a debt due to the authority and is to be paid by the body in default.

443 This section also amends section 118 of the Building Act 1984. The appropriate national authority may at any time vary or revoke a transfer order. A substantive change is that the Secretary of State must first consult with the Building Safety Regulator. The appropriate national authority 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.

Effect in Wales

444 This section will operate similarly in Wales. Welsh Ministers, as the "appropriate national authority" for Wales may also make a transfer order in respect of a local authority if the Welsh Ministers are satisfied that the way in which the authority exercises its functions under the Act falls short of the standards expected.

Background

445 This section amends sections 116, 117 and 118 of the Building Act 1984, to clarify the powers of the appropriate national authority 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 makes 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.

Section 46: Higher-risk building work: registered building control approvers

Effect

446 This section amends Part 2 of the Building Act 1984 in relation to higher-risk building work. Part 2 sets out the building control regime where building work is supervised by an Approved Inspector (to be renamed as registered building control approver by section 44 of this Act).

447 The amendments to sections 47 and 51A of the Building Act 1984 remove the ability for persons carrying out any building work which is higher-risk building work to choose their own building control body. (Higher-risk building work is defined in section 91ZA(3),

inserted by section 32, e.g. work to create a higher-risk building or any building work to a higher-risk building). Technically this change is achieved by prohibiting the submission of an initial notice or an amendment notice in relation to higher-risk building work.

448 The effect of the amendments in this section is to provide that any initial notice (or other notice or certificate under Part 2) which specifies building work which is higher-risk building work will be invalid (i.e. will be void and have no legal effect) and Part 2 (including the immunity from enforcement action) would not apply if that building work is carried out. For the avoidance of doubt any work carried out in these circumstances will not have the enforcement protection provided for in sections 48(1), 51(3) or 53(2) of the Building Act 1984. Further it is irrelevant whether the local authority purported to accept the initial notice – as it is void ab initio any acceptance of it will also have no effect.

449 Only the Building Safety Regulator can carry out supervision of higher-risk building work (see section 91ZA of the Building Act 1984, inserted by section 32). A person wishing to carry out building work which is higher-risk building work is unable to use a registered building control approver (currently known as Approved Inspectors) or a local authority to supervise that work.

450 New section 52A is inserted into the Building Act 1984 to deal with the situation where there are changes to original plans after an initial notice has been submitted i.e. where the original initial notice did not specify higher-risk building work but plans are changed later so that the work, if built, would result in some or all of the works being higher-risk building work. In this scenario the registered building control approver (or the person carrying out or intending to carry out the work) must cancel the relevant part of the original initial notice. The local authority is also required to cancel the relevant part of the initial notice if it becomes aware that some or all of the work is higher-risk building work.

451 Additionally, in England only, where the relevant part of an initial notice is cancelled under new section 52A the registered building control approver, person carrying out or intending to carry out work or local authority who cancelled it is under a duty to inform the Building Safety Regulator of the cancellation.

452 It is a criminal offence if without reasonable excuse the body or the person fails to cancel the relevant part of the notice or, in England, fails to give a copy of the notice to the regulator.

453 New section 52B is inserted into the Building Act 1984. It applies only where an initial notice is cancelled under new section 52A i.e. where the original initial notice did not specify any higher-risk building work, but plans subsequently changed. Section 52B(2) provides that where the relevant part of an initial notice is cancelled under section 52A and a final certificate has been given and accepted in relation to some or all of the work, then that work will have enforcement protection. The new section 52B also provides that the Building Safety Regulator will enforce building regulations in respect of all of the uncertified work, regardless of whether it is in relation to a period before or after the work became higher-risk building work.

454 Subsection (5) of section 46 creates a right of an appeal where a local authority cancels an initial notice under section 52A(4). The person carrying out the work or the registered building control approver may appeal to the magistrates' court (in Wales) or the First-tier

Tribunal (in England) on the grounds that the initial notice was not properly cancelled. Where the court or tribunal rules that the local authority has wrongly cancelled the notice, the original notice is not reinstated, however any issued final certificate persists, if accepted prior to the cancellation. The person carrying out the work and a registered building control approver may submit a new initial notice within seven days of the court or tribunal's ruling being handed down. This can be with either the original registered building control approver or another one. If the registered building control approver of the new initial notice is different to the registered building control approver of the original initial notice, then the certificate and transfer report process in sections 53B to 53E apply.

Effect in Wales

455 This section will operate in the same way in Wales where choice of building control body is similarly removed for higher-risk building work. For such work only the local authority for the area or as designated by Welsh Ministers will be able to act as building control authority. Where changes result in work becoming higher-risk building work, cancelation of the original notice and notification to the local authority will be required.

Background

456 This section 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 section 47).

457 This section amends the Building Act 1984 to prevent a dutyholder in relation to higher-risk building work 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 this type of building work and is able to apply the new regulatory arrangements to improve the safety of such buildings. The definition of "higher-risk building work" is dealt with in section 31.

Example 1

A registered building control approver inadvertently specifies some higher-risk building work in an initial notice. Whether or not the notice is accepted by the local authority the notice would be void and have no legal effect as section 47(1)(a) (as amended by this section) makes it unlawful for an initial notice to relate to a higher-risk building work. The whole notice would be void.

The following 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 2: Registered Building Control Approver

A registered building control approver may have submitted an initial notice for a building which did not specify any higher-risk building work, but with a change of plans the work subsequently becomes higher-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 building work is to then be the role of the Building Safety Regulator (see section 91ZA of the Building Act 1984 as inserted by section 32) and the construction Gateways or refurbishments etc. processes must be used.

Example 3: 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 4: Local authority

A local authority may receive an amendment notice which amends the original initial notice so that some or all of the works become higher-risk building work. An amendment notice that relates to proposed 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 relevant part of 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 section 32) and the construction Gateways etc. processes must be used.

Example 5: Part cancellation of an initial notice

A local authority receives an initial notice for a building project containing five buildings that are not higher-risk building work. Later the developer changes the plans for one of the buildings to be a higher-risk building and for the other four to remain non-higher-risk buildings. The initial notice would be partially cancelled, remaining valid for the four non-higher-risk buildings but not valid for the fifth, higher-risk building.

Section 47: Higher-risk building work: public bodies

Effect

458 This section 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 power would enable the Secretary of State to create a modified higher-risk buildings regime for public bodies, for example, 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.

Effect in Wales

459 This section will apply equally in Wales providing the equivalent power to Welsh Ministers

Proposed use of power

460 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 sections 5 and 54 of the Building Act 1984.

Background

461 A public body is defined in section 54 of the Building Act 1984 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. There are currently no public bodies approved by the Secretary of State under section 54.

462 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.

463 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.

464 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.

Example

The Secretary of State becomes aware that a public body is proposing to build a residential building of 18 metres 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.

Section 48: Insurance: Removal of requirements

Effect

465 This section removes the requirement in the Building Act 1984 for Approved Inspectors to hold insurance through a Government-approved scheme. Instead, Approved Inspectors will be required to adequately cover their own liabilities, including through insurance if necessary.

466 In section 42 of this Act, the Building Safety Regulator is also given powers to sanction any Approved Inspector who fails to meet standards set out by the professional conduct rules, which may include requirements on insurance.

Background

467 The existing Building Act 1984 requires Approved Inspectors to hold insurance through a DLUHC Secretary of State-approved scheme. This is supported by regulations which require Approved Inspectors to provide proof of adequate insurance when performing a number of their statutory functions, such as the signing of final certificates.

468 Removing the requirement for Government-approved insurance is designed to:

- Make the Approved Inspectors sector more resilient and flexible in the face of insurance market fluctuations, and

- Create alignment with insurance requirements between Approved Inspectors and other professions.

469 Secondary legislation will remove the requirement for Approved Inspectors to provide proof of adequate insurance when performing their statutory functions.

> ### Example
> Examples of Approved Inspector statutory functions include the submission of initial notices to local authorities, and the signing of part-final and final certificates.
>
> Secondary legislation will remove the requirement for Approved Inspectors to provide proof of insurance when performing these functions. Checking proof of insurance is currently undertaken by local authorities, and consequently these changes will reduce burden on LAs. The Approved Inspector regulatory body CICAIR will also no longer be required to check insurance for its register of Approved Inspectors.

Section 49: Plans Certificates

Effect

470 This section amends section 50 of the Building Act 1984 on plans certificates.

471 Section 48(2)(a) inserts into the Act new section 50(1A), which sets out the conditions which must be met for a registered building control approver to issue a plans certificate. These are that the registered building control approver must have inspected the full plans or such plans as are sufficient for the purposes of issuing a plans certificate for the work (new section 50(1A)(a)(i) and (ii)); that the plans are not defective (new section 50(1A)(b)); that the registered building control approver is satisfied that the work covered by the plans, if carried out in accordance with the plans, will comply with building regulations' requirements (new section 50(1A)(c)); and that relevant consultation requirements have been met ((new section 50(1A)(d)).

472 Where the conditions are met, and the person carrying out the work so requests, new sections 50(1B) and (1C) require that the registered building control approver must issue a plans certificate.

473 New section 50(1D) requires that plans certificates must be provided in the prescribed form.

474 Section 48(2)(c) also inserts new section 50(7A) into the Building Act 1984 which enables building regulations to prescribe circumstances in which a plans certificate must be issued and the consequences if a plans certificate is not issued in those prescribed circumstances, for example that the initial notice which has been issued for the work ceases to have effect. It is expected, for example, that plans certificates will be required for buildings covered by the Regulatory Reform (Fire Safety) Order 2005.

475 It also enables building regulations to prescribe that, where the registered building control approver issues a plans certificate in the circumstances set out in subsection (1A)(a)(ii), prescribed information needs to be included on the plans certificate about further plans which the registered building control approver considers need to be provided.

476 Section 48(3) amends paragraph 2 of Schedule 4 to the Building Act 1984 to make similar provision in respect of a public body's notice plans certificate.

Effect in Wales

477 This section applies in Wales.

Background

478 New section 50 of the Building Act 1984 enables a registered building control approver, at the request of a person intending to carry out building work, to issue a plans certificate to the local authority if they have inspected plans of work covered by an Initial Notice, and are satisfied that if the work is carried out in accordance with the plans, the work will comply with building regulations' requirements. Under section 53 of the Act and Regulation 15 of the Building (Approved Inspectors) Regulations 2010, a plans certificate has the effect that a local authority cannot take action under sections 35 and 36 of the Building Act 1984 if the work covered by the certificate has been carried out in accordance with the plans.

479 A local authority can reject a plans certificate only on prescribed grounds, which are set out in Schedules 2 and 3 of the Approved Inspectors Regulations. The form of a plans certificate is set out in Schedule 1 of the Approved Inspectors Regulations.

480 Paragraph 2 of Schedule 4 to the Building Act 1984 provides that a public body's notice plans certificate can be issued for work covered by a public body's notice if the same conditions as apply to the issue of a plans certificate are met. A public body' plans certificate is the same as for a plans certificate. The grounds for rejecting a public body's notice plans certificate, and the form of a public body's notice plans certificate, are set out in Schedules 1, 5 and 6 of the Approved Inspectors Regulations.

481 The Government consulted in Summer 2020 on proposals that plans certificates should be mandated in certain circumstances. Following the consultation, the Government announced that it would proceed with these plans. See Part 3 of https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970325/UPDATED_FINAL_Government_Response_to_Fire_Safety_Consultation.pdf.

Example

A person carries out building work on a building covered by the Fire Safety Order 2005. A registered building control approver is appointed as the building control body for the work. The registered building control approver has to check the plans of the work to ensure that if work is carried out in accordance with the plans it will comply with building regulations' requirements and issue a plans certificate to the local authority using the prescribed form. However, not all the plans for the work are available to be checked at the point at which the plans certificate is issued. Therefore, although the registered building control approver considers the plans are sufficient to issue a plans certificate, they require further plans to be provided and this is set out on the plans certificate.

Section 50: Cancellation of initial notice

Effect

482 This section 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.

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

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

485 New section 52(3) is also amended to insert a new power to prescribe further circumstances where a person carrying out work is required to cancel the initial notice for the work. This is a reserve power. There are no current plans to use this power but as the regime is changing it is considered important to have this flexibility.

486 New section 52 is also amended to insert a new subsection (5A) which provides that a local authority must cancel an initial notice where it becomes aware that the registered building control approver has had its registration varied (such that it is not registered in relation to the work), suspended or cancelled, and in other circumstances to be prescribed.

Effect in Wales

487 This section will apply equally in Wales. For example, disciplinary action from Welsh Ministers or their designated body in respect of an Approver under section 42 will require cancellation of an initial notice.

Background

488 At present, if an Approved Inspector/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 section amends section 52 of the Building Act 1984 to introduce new powers and obligations on the person shown on the initial notice as the registered building control approver (even if they are no longer registered), 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 has insurance only 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 suspended in relation to commercial projects pending the approver obtaining insurance cover.

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. 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 of the suspension or cancellation of the approver's registration.

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

Section 51: New initial notices

Effect

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

490 The amendments to section 53(7) of the Building Act 1984 allows a new initial notice to be given where an initial notice is cancelled by virtue of either disciplinary action taken by Building Safety Regulator, cancellation of initial notice, or where the initial notice lapses. In cases of a cancellation referred to in section 53(7)(a) the new initial notice must follow the process in section 53B is followed.

491 The process in section 53B requires 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. Conversely, If the registered building control approver is unable to determine whether the unfinished work meets building regulations, they must set out why in a notice to the person carrying out or intending to carry out the work and provide a copy of that notice to the local authority.

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

493 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. 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.

494 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.

495 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.

496 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.

497 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. 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.

498 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.

499 Additionally, this section amends section 53 of the Building Act 1984 to allow the Secretary of State to issue guidance in relation to the new transfer process to assist in the smooth operation of the regime.

Effect in Wales

500 This section will apply in Wales. Power to issue guidance will rest with Welsh Ministers.

Background

501 Currently if a registered building control approver is unable to undertake their function, their work reverts to local authority supervision 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.

502 Similar circumstances such as this could also arise in the future. The measures in this section 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 or, in relation to Wales, the Welsh Ministers 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 another registered building control approver.

Example 2: New 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 new 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 new registered building control approver.

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 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.

Section 52: Information gathering

Effect

503 This section amends section 53 of the Building Act 1984 in order to enable a local authority to seek information from the person shown on the initial notice as the registered building control approver where it has ceased to supervise a project. This could include requiring a person who is no longer a registered building control approver to provide all its records of supervision of building work. The provision requires that any information provided to the local authority must also be copied to the person carrying out the work. New subsection (4C)(c) also gives the person carrying out the work with a power, by notice, to require other information which a new registered building control approver may need.

504 This section also amends section 57 of the Building Act 1984 to make it a criminal offence to fail, without a reasonable excuse, to provide the local authority with the information requested.

Effect in Wales

505 This section will apply in Wales.

Proposed use of power

506 This provision allows the Secretary of State to make regulations to the prescribed period by which the registered building control approver must furnish information to the local authority and the person carrying out or intending to carry out the work, which they may by notice reasonably require.

Background

507 This section is a new power in response to issues arising from a number of Approved Inspectors that went into administration in 2019. In some cases, administrators have refused to provide information to local authorities and even to the clients of the Approved Inspector because they considered they were under no duty to do so in the Building Act 1984. This section places the person shown on the initial notice as the registered building control approver (formerly Approved Inspectors) under a new duty to provide all information requested by a local authority whether or not the person is still a registered building control approver and also to the person carrying out or intending to carry 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 and the work becomes subject to building control supervision by the local authority.

In order to facilitate its building control functions, the local authority may issue a notice to the person shown on the cancelled initial notice as the registered building control approver requiring it to provide the local authority with the relevant information it holds on the building works. A copy of any 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 including any information sent to the local authority and any other information they may by notice reasonably require.

Section 53: Information

Effect

508 This section amends the Building Act 1984 by inserting sections 56A to 56C.

509 This section, which mainly applies to England only, 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 regulations provide for existing information held on the current registers to be saved in their historic form for a long transitional period or uploaded to the new electronic register/portal).

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

511 The provision gives the Secretary of State the power to set out in regulations a requirement for a 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.

512 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.

513 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.

514 This section also makes a number of consequential amendments.

Proposed use of this power

515 Regulations will need to be laid to provide details on the prescribed portal, information and persons in order to implement this section.

Background

516 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.

517 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.

518 Whilst no new information will be added to existing registers once the new national register comes into force, the existing local registers will need to be kept and accessible to the public for a long period or historic information may be uploaded to the electronic register/portal.

Example: 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 set up by the Building Safety Regulator. The local authority will be notified immediately of the submission by the electronic portal and can 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 rejects it under prescribed grounds, it will be required to file this acceptance or rejection via the electronic portal.

Miscellaneous and general

Section 54: Functions under Part 3 of Building Act 1984

Effect

519 This section inserts new section 90A into the Building Act 1984 to provide 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.

520 Subsections (2) and (3) of new section 90A allow for notification requirements to be imposed on the regulator and/or local authorities. It is expected that this power will be used 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.

521 Regulations will be subject to the affirmative procedure (see new section 120A in Schedule 5).

522 This section applies to England only.

Background

523 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

There is a potential overlap in respect of higher-risk buildings between some of the functions placed on local authorities under Part 3 of the Building Act 1984 and the Building Safety Regulator's regulatory role for higher-risk buildings in occupation. A specific example is the ability under section 72 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.

Section 55: Minor and consequential amendments

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

525 See the explanatory note for Schedule 5 for effects in Wales.

Section 56: Appeals

Effect

526 This section relates to Schedule 6, which makes provision for changes to the appeals process under the Building Act 1984.

527 It sets out that that Schedule 6 to this Act 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.

528 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.

Effect in Wales

529 See the explanatory notes to Schedule 6 for the effect in Wales.

Background

530 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.

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

> Example
> A developer wishes to appeal a decision made by the Building Safety Regulator on a building control matter in England; 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 in England to deal with building safety hearings, which previously would have been heard by a local magistrate who might hear no more than one construction related case per year.
>
> Further notes are provided for this section in Schedule 6.

Section 57: Fees and charges

Effect

532 This section inserts new section 105B into the Building Act 1984 to allow, in England, 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.

533 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.

Effect in Wales

534 This section applies in Wales where Welsh Ministers will, as the "appropriate national authority" have powers to prescribe fee and charge levels chargeable by Welsh Ministers or Welsh local authorities for Building Act 1984 functions.

Background

535 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. These powers have been used to make the Building (Local Authority Charges) Regulations 2010 (the "Charging Regulations").

536 New section 105B of the Building Act 1984 extends these powers to cover all functions exercised by local authorities in England and Wales, the Building Safety Regulator in England, and the Welsh Ministers in Wales, under the Building Act 1984 and regulations made under it. The power in new section 105B enables levels of fees and charges to be prescribed in the regulations or to be fixed in schemes drawn up by local authorities, the Welsh Ministers 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 (in England) and Managing Welsh Public Money (in Wales). Regulations will be subject to the negative procedure, as are the current Charging Regulations.

537 Paragraph 82 of Schedule 5 to this Act consequentially repeals paragraphs 5 and 9 of Schedule 1 to the Building Act 1984.

Example

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 in England 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. It is therefore expected that the Building Safety Regulator will charge fees for its activities as a building control authority and will charge fees where appropriate for other functions it performs under the Building Act 1984 (for instance, applications for registration as a registered building inspector).

Section 58: Levy on applications for building control approval

Effect

538 This section amends the Building Act 1984 to confer powers on the Secretary of State to impose a new building safety levy in England, that will contribute to the government's costs of remediating building safety defects. This will apply to persons making certain applications for building control approval.

539 The types of buildings and building work affected will be prescribed in secondary legislation. This section allows the Secretary of State to distinguish in setting the levy between persons eligible to join a building industry scheme but who do not join a scheme and others.

540 The levy will be paid to the Secretary of State, or a body designated by the Secretary of State. A percentage of levy funds may also be set aside to cover the costs of administering the levy.

541 Regulations will set out the detailed design of the levy. This will include the basis for the levy and rates; who must pay and when; the consequences of non-payment; refunds; and disputes. Provision will be made to allow the withholding of building control approvals unless the levy has been paid.

Background

542 This is a new levy, contributing to the government's investment in building safety to protect leaseholders from unaffordable remediation costs.

543 The levy will be paid as part of the building control process and will apply to all new residential developments, unless otherwise excluded.

> ### Example
> A developer makes an application to the building control body about a new residential development. At the same time, they self-assess their levy liability and make the payment to the designated levy administrator, along with providing the necessary supporting information. The calculation is checked by the levy administrator. Where the levy is paid in full and assessed as correct, the building process continues. Where the levy is liable and not paid, the building control body will have the powers in regulations to refuse the application or not grant it until the levy is paid.

Section 59: Crown application

Effect

544 This section introduces a new section to the Building Act 1984 that makes provision about the application of Parts 1 (with certain exceptions), 2 and 2A (with exceptions) of the Building Act 1984 to the Crown. It also makes provision about the application of Part 4 of that Act so far as relating to provisions in the Parts mentioned above.

Background

545 This is a new section.

Section 60: Application to Parliament

Effect

546 This section makes provision about the application of the Building Act 1984 to Parliament.

547 This Section provides that section 95 of the Building Act 1984, concerning the power to enter premises, does not apply to the Parliamentary Estate.

548 This section also inserts a new section 131B into the Building Act 1984. That section concerns the application of Parts 1 and 2 of the Building Act 1984, and Part 4 of that Act (in relation to these Parts), to the Parliamentary Estate.

549 Section 131B provides that sections 35B to 37, 39A and 40 of the Building Act 1984 do not apply to the Parliamentary Estate.

550 It also provides that no contravention by a Corporate Officer of a relevant provision makes the Corporate Officer criminally liable. The exclusion from criminal liability does not affect the criminal liability of an individual member of staff. Where a contravention would render a Corporate Officer liable the local authority may apply to the High Court to declare the actions of the Corporate Officer unlawful.

Background

551 This is a new provision.

Part 4: Higher-risk buildings

Introduction

Section 61: Overview of Part

Effect

552 This section is intended to assist the reader of the Act to understand the provisions that follow. It sets out the main elements of Part 4 of the Act. This section is not intended to have legal effect; rather it guides the reader through the remaining provisions of this part of the Act, which are intended to have legal effect.

Background

553 This is a new provision.

Meaning of "building safety risk"

Section 62: Meaning of "building safety risk"

Effect

554 The new regulatory regime will regulate "building safety risks" in higher-risk buildings. These are the risks that the Accountable Person will manage in occupation, via the safety case, in order to prevent an incident involving these risks.

555 This section 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 spread, structural failure, and any other risk that may be prescribed by regulations in the future.

556 This section is drafted using fire spread as the intention is that the fire must have spread from one part of the building to another in order to be considered a building safety risk. For example, this includes a fire spreading from one compartment to another within the building or from inside the building to the outside of the building. The intention is not to capture a fire spreading within a compartment.

557 The intention behind the term structural failure as a building safety risk is to capture when the structural integrity of the building fails in doing so poses a risk to the safety of people. This is likely to manifest as part or all of the building collapsing.

558 This section is drafted to capture risks inside and outside the building such as fire spreading on the external wall of a building but is limited to risks that are associated with the building and/or arising from the building itself. Risks are also limited to those affecting people in and about buildings.

559 This section 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. This section will therefore allow the future scope of the regulatory regime to

remain flexible should evidence emerge, for example, that another risk arising from a building has the potential to cause a major incident (serious injury or death to a significant number of people).

560 The power to prescribe a new building safety risk will be by regulations 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.

561 In addition to the requirement to consult in this section, the Secretary of State can ask the Building Regulator to advise them as to whether a particular new building safety risk should be prescribed and the Building Safety Regulator is obliged to provide such advice on request (section 64). Alternatively, the Building Safety Regulator may proactively recommend to the Secretary of State to specify a new building safety risk (section 63).

562 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 switched off, although the Secretary of State still must consult such other persons as they consider appropriate.

563 Schedule 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.

564 Once prescribed, the Secretary of State will have the power, by regulations, to remove a prescribed risk from the definition of building safety risks. This power will apply only to prescribed risks and not to the risks expressly set out on the face of the Act: fire spread and structural failure – these will remain at the heart of the building safety regime.

Proposed use of power

565 It is not proposed to prescribe any additional building safety risks using the power in this section at this time.

Background

566 This is a new provision.

567 The Independent Review focused on fire and structural safety risks and recommended these were the initial scope for building safety risks in the new regime.

568 The Government sought research from the Health and Safety Executive in relation to risks that are considered to be catastrophic to verify our approach and focus. The conclusions of this research are 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. Explosion events can trigger a rapid onset escalating fire or structural event.

Example

The following is a hypothetical example.

After the new occupation regime has been operating for two years, the Secretary of State may feel that changing weather systems mean 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 appropriate bodies – in this scenario this might include structural engineers, environmental and weather experts.

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

Section 63: Recommendations about regulations under Section 62; and Section 64: Advice about regulations under section 62

Effect

569 The new regulatory regime will regulate building safety risks in higher-risk buildings – building safety risks are defined in section 62. The Act provides a power for the Secretary of State to prescribe new building safety risks in section 62. This may be done only following consultation with the Building Safety Regulator and appropriate persons.

570 Section 63 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 or a particular type of higher-risk building, it would have the potential to cause a major incident (serious injury or death for a significant number of people).

571 The Building Safety Regulator may also recommend to the Secretary of State to specify a new "building safety risk" and a new class of higher-risk building simultaneously. Before making such a recommendation, the Building Safety Regulator must be satisfied that if the new building safety risk occurred in the new class of higher-risk building it would have the potential to cause a major incident (serious injury or death to a significant number of

people), that the risk of it occurring in the new class of higher-risk building is higher than in other buildings, and that the new occupation regulatory regime should apply to the new class of "higher-risk building".

572 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 Regulator is unable to recommend under this section that fire spread or structural safety are removed from the definition of building safety risks.

573 When making a recommendation, the Building Safety Regulator must include details of the issues that have been considered to reach the recommendation.

574 Supplementary to section 62 and section 63 is section 64. In addition to the requirement to consult in section 62, 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.

575 Schedule 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.

576 If the Secretary of State does not follow the recommendation of the Building Safety Regulator under section 63, then they must publish a document which sets out the Regulator's recommendation, the Secretary of State's decision not to follow the recommendation and the reasons for that decision.

Background

577 These are new provisions.

Example

The following example is purely hypothetical.

Several years after the new regulatory regime is transitioned in, the Building Safety Regulator, through its duty to keep the safety and standard of buildings under review, becomes aware of a construction product with previously unknown consequences which has the potential to cause a major incident. This could be a similar scenario to the historical issues of using asbestos. One of the actions the Building Safety Regulator may take is to provide a recommendation to prescribe a new building safety risk and regulate the risk through this regime. It would also recommend that the categories of buildings affected become higher-risk buildings.

If the Secretary of State accepts these recommendations, they must consult other appropriate people and, undertake a cost benefit analysis of the addition of a new category of building to the definition of higher risk building before they can make regulations to put the recommendation into effect.

After some time, protocols for dealing with the product may have become widely known and the product may be less prevalent in buildings. Therefore, the Building Safety Regulator may recommend to the Secretary of State to remove the product as a prescribed risk, as it is no longer appropriate for it to remain a building safety risk within this regime.

The Secretary of State may make regulations to put this recommendation into effect after consulting other persons they consider appropriate.

Meaning of "higher-risk building"

Section 65: Meaning of "higher-risk building" etc and Section 66: Regulations under section 65: procedure and Section 67: Regulations under section 65: additional procedure in certain cases

Effect

578 The new regulatory regime will regulate building safety risks in "higher-risk buildings" in England. Section 65 defines the "higher-risk buildings", which will be regulated by the new occupation regime, as at least 18 metres in height or having at least 7 storeys and containing at least two residential units. Residential units are either a dwelling or any other unit of living accommodation, for example student accommodation where basic amenities, such as cooking facilities, a toilet and personal washing facilities are shared with others in the building.

579 Section 65 gives the Secretary of State the power, by regulations, to supplement this definition (subsections (2) and (3)), for example by defining building, storey and technical details such as the method for measuring the height of a building. Subsection (4) provides that the definition of "building" in regulations may include other structures, erections or movable objects. The ability to have a broad definition aligns with section 121 of the Building Act 1984. Regulations made under this power are subject to the negative resolution procedure.

580 Section 65 also gives the Secretary of State the power (used in the way described in (3)(c), by regulations, to exclude classifications of building from the definition of "higher-risk building". This means a building may be caught by the definition in this section but then excluded through regulations made under this power and therefore not defined as a "higher-risk building". Regulations made under this power are subject to the affirmative resolution procedure, i.e. they must be laid in draft, debated and approved in both Houses of Parliament before they can be made.

581 Section 65 gives the Secretary of State the power to amend section 65, apart from subsections (2) and (5). This power could be used to amend the definition of "higher-risk building". Regulations made under this power are subject to the affirmative resolution procedure, i.e. they must be laid in draft, debated and approved in both Houses of Parliament before they can be made.

582 When making regulations to amend the definition of "higher-risk building", this can be done by reference to a building's size, design, use, purpose or other characteristic (section 166).

583 Section 66 stipulates that the Secretary of State must consult the Building Safety Regulator and any other appropriate persons before making regulations. It also states that the Secretary of State does not need to repeat this consultation with the Building Safety Regulator if they have received a recommendation or requested advice. This includes when the Secretary of State proposes to make regulations to remove a category of building from the definition of higher-risk building.

584 Section 67 further stipulates the requirements at when the Secretary of State must meet when they proposes to make regulations which would result in a description of building being added to the definition of "higher-risk building", and therefore subject to the new occupation regulatory regime., They must have received a recommendation from the Regulator (section 69) or request advice from the Regulator (section 70) and they must undertake and publish a cost benefit analysis. If the costs or benefits cannot be reasonably or practicably estimated, then the Secretary of State must provide an explanation of this

Proposed use of power

585 At the start of the new regulatory regime, it is proposed to supplement the definition of "higher-risk building".

Background

586 This is a new provision.

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

588 Following pre-legislative scrutiny, the Housing, Communities and Local Government Committee recommended including the definition of "higher-risk buildings" within the Act, rather than in regulations.

Example

The following example is purely hypothetical. After the new regime has been operating for two years the Secretary of State may decide that consideration is needed as to whether single storey premises in areas of high flood risk should be higher-risk buildings because of a concern about structural failure following recent flooding incidents.

If the Secretary of State came to this view, they must request advice from the Building Safety Regulator. The Building Safety Regulator must consider whether single storey premises in areas of high flood risk meet the three conditions specified in section 70(2).

In this hypothetical example, the Regulator considers the conditions are met. The Building Safety Regulator must also consider whether the application of Part 4 of this Act should be modified if it is applied to single storey premises in areas of high flood risk. The Regulator does not consider that the application of part 4 should be modified. The Regulator must then make a recommendation to the Secretary of State to amend the definition of a "higher-risk building" and provide a statement of the issues it considered in coming to that recommendation.

Having considered the recommendation, the Secretary of State may be minded to agree and make regulations to amend the definition of "higher-risk buildings". They must then consult any other persons the Secretary of State considers appropriate and undertake a cost benefit analysis, if they have not already done so whilst requesting advice from the Regulator. Having considered the recommendation, the representations made and the cost benefit analysis, the Secretary of State will decide whether to amend the definition of "higher-risk building".

If the Minister chooses to make the amendment, the regulations will be laid in Parliament using the affirmative procedure and be accompanied by the requisite documentation. If the Secretary of State chooses not to make the amendment, then the Secretary of State must publish a document setting out the Regulator's recommendation, their decision not to implement it and the reasons for their decision.

Section 68: Modification of Part in relation to certain kinds of higher-risk building

Effect

589 The new regulatory regime in Part 4 of the Act will regulate building safety risks in higher-risk buildings. Section 65 provides for the definition of "higher-risk building" in Part 4 of the Act to be amended by regulations.

590 This section provides some further flexibility. It gives the Secretary of State the power to modify Part 4 of this Act in relation to particular categories of 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 Act 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.

591 When providing advice under section 70 or making its recommendation under section 69 regarding the definition of "higher-risk building", the Building Safety Regulator must also consider whether it is appropriate to make modifications to how Part 4 should apply to that description of building.

592 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. This includes applying differing requirements for specific types of higher-risk buildings where appropriate.

593 The power to amend section 65: Meaning of "higher-risk building" etc. apart from subsections (2) and (5), the power to exclude categories of building from the definition of "higher-risk building" by regulations (section 66) and the power to modify the application of the regime to higher-risk buildings (this Section) will all be subject to the affirmative procedure.

594 Before making any new regulations under this Section 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

595 See section 65 above for the definition of "higher-risk building" in relation to Part 4 of this Act. It is not proposed to make any modifications under this section to the regulatory regime for the types of building falling within this definition.

Background

596 This is a new provision.

Example

The following example is purely hypothetical.

After the occupation regime has been operating for two years, the Secretary of State may feel that it is not appropriate for the resident engagement requirements to apply to higher-risk buildings which consist of boarding school accommodation which only houses minors, 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.

Having considered the consultation responses, the Secretary of State will then decide whether or not to make the regulations making the modification.

Section 69: Recommendations about definition of "higher-risk building" etc

Effect

597 The new in occupation regime will regulate building safety risks in higher-risk buildings. Section 65 sets out the definition of "higher-risk building" for Part 4 of this Act.

598 This section 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 section 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, that if the 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), and that the Regulator considers it appropriate for the regulatory regime to apply.

599 In making recommendations, the Building Safety Regulator must also make a recommendation as to whether the application of Part 4 should be modified for the description of building which it has recommended should come into scope of the regulatory regime (using the power in section 68). This is because there might be cases where it is not appropriate to apply every provision of the regime in occupation to a certain description of building, and so when making its recommendation about bringing a description of 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.

600 When making a recommendation to add a description of building to the definition of "higher-risk building", the Building Safety Regulator must provide the Secretary of State with a statement of the issues considered.

601 If the Secretary of State chooses not to follow a recommendation of the Building Safety Regulator, then they must publish a document which sets out the Regulator's recommendation, the Secretary of State's decision not to follow the recommendation, and the reasons for that decision.

602 The Building Safety Regulator may also recommend the removal of a description of higher-risk building from the regulatory regime.

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

604 The Building Safety Regulator would use the powers in this section if, following the commencement of the regulatory regime, the Building Safety Regulator independently considers, either through evidence or experience of operating the regime, it needs to make recommendations to the Secretary of State to amend the definition of "higher-risk building", because the tests in subsection (1) are met.

Background

605 This is a new provision.

Example

The following is a hypothetical example.

Two years after the regime comes into force, with experience of operating the regime, the Building Safety Regulator may decide that consideration is needed as to whether single-storey premises in areas of high flood risk should be higher-risk buildings because of a concern about structural failure following recent flooding incidents.

In order to make a recommendation to the Secretary of State, the Building Safety Regulator must consider that the building safety risks in relation to this type of building are higher than in buildings in general and that if the risk materialised it has the potential to cause a major incident. If that is the case, and if the Regulator thinks it appropriate, the Regulator must recommend to the Secretary of State that single-storey premises in areas of high flood risk, should be considered higher-risk buildings.

In this example the Building Safety Regulator must also consider whether Part 4 should apply in its entirety to single-storey premises in areas of high flood risk, or whether it should be modified or disapplied in part.

The Secretary of State would then consider this recommendation. In this example, if the Secretary of State agreed with the recommendation, they would then have to consult other appropriate persons and undertake and publish a cost benefit analysis. Following that, if the Secretary of State chooses to make regulations under Section 65 to bring single-storey premises in areas of high flood risk into scope of the in-occupation elements of the regulatory regime, the regulations would be subject to the affirmative resolution procedure in both Houses of Parliament. Subject to Parliament's approval, this type of building would then be regulated by the Building Safety Regulator subject to a suitable transition period.

If the Secretary of State disagreed with the Building Safety Regulator and chose not to prescribe single-storey premises in areas of high flood risk as higher-risk buildings, the Secretary of State would be required to publish a document setting out the original recommendation, and stating both their decision not to follow the recommendation and reasons why.

Section 70: Advice about definition of "higher-risk building" etc

Effect

606 The new in occupation regulatory regime will regulate building safety risks in higher-risk buildings in England. 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. The Building Safety Regulator is obliged to provide such advice on request.

607 This section sets out that if the Secretary of State asks the Building Safety Regulator to provide advice as to whether a new description of building should be added to the definition of "higher-risk building", the Regulator must consider whether the conditions at subsection (2) (a) - (c) of the section 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, that if the 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) and that the Regulator considers it appropriate for the regulatory regime to apply.

608 If the Building Safety Regulator considers the conditions are met, it must consider which parts of the occupation regulatory regime should apply. The Regulator must then recommend to the Secretary of State that the new description of building is added to the definition of "higher-risk building", specify whether Part 4 should be modified and provide a statement of the issues it considered alongside the recommendation.

609 If the Building Safety Regulator considers the conditions are not met, it must provide advice that the new description of building should not be added to the definition of "higher-risk building", and provide a statement of the issues it considered.

610 This section also sets out that the Building Safety Regulator must provide advice as to whether a description of building should be removed from the definition of "higher-risk building", if the Secretary of State requests it.

611 Section 65 provides for the Secretary of State to amend the definition of higher-risk buildings in regulations. The power is flexible because section 68 gives the Secretary of State a power, by regulations, to apply only parts of the in occupation regulatory regime to descriptions of higher-risk buildings.

612 Schedule 5 will support this function of the Building Safety Regulator as it 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

613 This is a new provision.

614 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.

615 The Building Safety Regulator will oversee the building safety regulatory system and will analyse data from the operating regime to be able to fulfil this duty.

Example

The following is a hypothetical example.

After the new occupation regime has been operating for two years, the Secretary of State may decide that consideration is needed as to whether single-storey premises in areas of high flood risk should be higher-risk buildings because of a concern about structural failure following recent flooding incidents. 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 Regulator considered the three conditions set out in this section, subsections (2) (a) - (c) were met, it would also be required to explain whether any modifications should be made to the regulatory regime, as set in in Part 4 of this Act, in relation to its application to the proposed new type of building.

Following this, the Regulator must recommend to the Secretary of State that single-storey premises in areas of high flood risk should be higher-risk buildings, whether any modifications to the regulatory regime should be made and provide the Secretary of State a statement of the issues it considered in coming to that recommendation.

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. The Secretary of State must also undertake and publish a cost benefit analysis.

If the Secretary of State chooses to make the amendment, the regulations will be laid in Parliament using the affirmative procedure. If the Secretary of State chooses not to make the amendment, then they must publish a document setting out the Regulator's recommendation, their decision not to implement it and the reasons for their decision.

Meaning of "Accountable Person" and other key definitions

Section 71: Meaning of "occupied" higher risk building etc

Effect

616 The majority of this part of the regulatory regime will apply only to buildings which meet the definition of "higher-risk buildings" (section 65) which are "occupied". This section defines the meaning of "occupied" and requires that the building is in multi-occupation by residents of two or more residential units.

617 This section also creates a power for the Secretary of State to amend the definition of "occupied" and the definition of a "resident" of a higher-risk building. There is also a power to define the meaning of being a "resident" of a residential unit. These powers ensure that the regime could be adapted in the future.

Background

618 This is a new provision.

619 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.

Section 72: Meaning of "Accountable Person" etc

Effect

620 This section sets out the definition of an Accountable Person. For the purposes of this part of the Act the Accountable Person is the entity responsible for meeting the statutory obligations under Part 4 for occupied higher-risk buildings.

621 Subsection (1) states that the Accountable Person is the person who is under a relevant repairing obligation for any part of the common parts of the building under a lease or by virtue of an enactment. This will normally be the landlord or a superior landlord. But where there is no person with a relevant repairing obligation the Accountable Person is the person who has the legal estate in possession of any part of the common parts of the building

622 It therefore makes provision for management bodies to be defined as Accountable Persons. In circumstances where the lease sets out repair and maintenance obligations on that management body, this includes Right to Manage Companies.

623 Subsection (2) sets out circumstances when a person who would have been an Accountable Person under subsection (1)(a) would no longer be considered an Accountable Person for the building. This may occur when another person is under a relevant repairing obligation for all the relevant common parts or if their repairing obligations in relation to all the common parts are subsequently obligations of a Right to Manage Company.

624 Subsections (3) and (4) identifies the person with the relevant repairing obligation for the common parts of the higher-risk building as an Accountable Person where the ownership arrangements consist of a complex chain of leases. This may occur when for example, a

person who holds a legal estate in possession in any of the common parts has a superior landlord or landlord who has agreed, in a superior lease, to keep the common parts of the building in repair. lease, to keep the common parts of the building in repair. lease, to keep the common parts of the building in repair. lease, to keep the common parts of the building in repair.

625 Where this is be the case, the superior landlord or landlord will be an Accountable Person for those parts of the building, instead of the person who holds a legal estate in possession of those common parts.

626 Subsection (5) provides that where the title to a higher-risk building is held in commonhold, the commonhold association will always be the Accountable Person for the building.

627 Subsection (6) defines the key terms used within this section.

628 Notably, common parts include 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.

629 It also clarifies in accordance with Section 114 references to a lease as being:

- a lease granted for a term certain exceeding 21 years, whether it is (or may become) terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture; or
- a lease for a term fixed by law under a grant with a covenant or obligation for perpetual renewal, other than a lease by sub-demise from one which is not a long lease.

630 Subsection (7) gives powers to the Secretary of State to amend the definition of an Accountable Person by way of regulations.

Background

631 This is a new provision.

632 The Independent Review identified that there should be a clear dutyholder during occupation who can be held to account and 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

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 section, 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.

Section 73: Meaning of "principal accountable person"

Effect

633 This section sets out the definition of a Principal Accountable Person. For the purposes of this part of Act they will be responsible for meeting specific statutory obligations for the whole of the occupied higher-risk building where there are either more than one Accountable Person or where they are the sole Accountable Person.

634 Subsection (1) sets out that the persons who may therefore be the Principal Accountable Person for a higher-risk building are either: the only Accountable Person in the building; or when there is more than one Accountable Person, they are the entity that is either the owner of or has the repairing obligations for the structure and exterior of the building.

635 Subsection (2) sets out that the relevant parts of the structure and exterior of a building refers to its structure and exterior except so far as parts included in a demise of a single dwelling or of premises to be occupied for the purposes of a business.

636 Subsection (3) sets out that the First tier Tribunal has the power to define who is the Principal Accountable Person for the building where there is more than one owner who meets the definition for being a Principal Accountable Person under subsection (1)(b). The First tier Tribunal will be able to determine any such definition under the powers set out in section 72(2).

637 This section is linked to section 109 as each Accountable Person must cooperate and coordinate with every other Accountable Person in the building.

638 Under Section 93, the Secretary of State will put into regulations a requirement for each Accountable Person for the building who is aware of a lack of cooperation from another Accountable Person, to have their own duty to report such lack of cooperation to the Building Safety Regulator.

Background

639 This is a new provision.

640 The Independent Review identified that there should be a clearly defined dutyholder during occupation who can be held to account and will have statutory obligations for ensuring that fire and structural safety is being effectively managed for the whole building. Building ownership in the UK is complex and the definition of a Principal Accountable Person will ensure that there is a lead Accountable Person, the Principal Accountable Person, specifically responsible for various obligations under the regime. This will include applying for registration, and preparing the safety case report, avoiding the possibility of any relevant parties being able to absolve themselves of obligations and duties under this part.

Example

In a building with a single Accountable Person, that Accountable Person will be responsible for all the Accountable Person duties in Part 4. Where there are two or more Accountable Persons, provisions are in place to determine that one of them will be assigned as the Principal Accountable Person with overall responsibility for meeting specific statutory obligations for the whole building.

The Principal Accountable Person will have the same statutory obligations for assessing and managing building safety risks in their own area of the building as other Accountable Persons in the building.

In a building where there is a freeholder which retains repairing obligations for the exterior and structure of the property, and there is a superior leaseholder which retains repairing obligations for all the other "inner" common parts, both entities will be Accountable Persons and the freeholder will be the Principal Accountable Person.

In a building where there is a freeholder which does not retain repairing obligations, a superior leaseholder with repairing obligations for the exterior and structure of the property and a management company where every lease in the property states that the management company is responsible for the remainder of the common parts, the superior leaseholder and the management company will be Accountable Persons. The superior leaseholder will be the Principal Accountable Person.

Section 74: Part of building for which an accountable person is responsible

Effect

641 This section sets out that the parts of a higher-risk building for which an Accountable Person is responsible for will be determined in accordance with regulations.

642 These regulations will provide clarity to Accountable persons about the areas that fall under their remit for the purposes of fulfilling their duties under the Act.

Background

643 This is a new provision.

Section 75: Determinations by the Tribunal

Effect

644 This section sets out that an "interested party" may apply to the tribunal for a determination as to who is the Accountable Person(s) for the building, who the Principal Accountable Person is, or to determine the parts of the higher-risk building for which any Accountable Person is responsible for.

645 Subsection (2) sets out that where upon application to the tribunal for a determination as to who the Principal Accountable Person, and where it appears that there is more than one Accountable Person that satisfies the definition in Section 73, the tribunal can make the decision as to who the Principal Accountable is as it considers appropriate. This could be in circumstances where they hold a legal estate in possession of the structure and exterior or have a relevant repairing obligation in relation to the relevant parts of the structure and exterior of the building), the tribunal will decide as it considers appropriate, who the Principal Accountable Person for the building is.

646 Subsection (3) defines an interested person that may apply to the tribunal for such a determination as being either the regulator, a person who holds a legal estate in any part of the common parts of the building or, a person who is under a relevant repairing obligation in relation to any part of the common parts (or who claims to be under such an obligation).

647 Subsection (4) aligns the definition of relevant repairing obligation and common parts with the definition as set out in section 72.

Background

648 This is a new provision.

649 The Independent Review identified that there should be a clearly defined dutyholder during occupation who can be held to account and will have statutory obligations to maintain the fire and structural safety of the building. This section provides certainty through the tribunal of where it is unclear who is the Accountable Person(s) for the building are, who the Principal Accountable Person is, or the parts of the higher-risk building for which any Accountable Person is responsible for.

Example

If no one is clearly identified as the Principal Accountable Person or refuses to acknowledge that they are the Principal Accountable Person, the Regulator can apply to the tribunal for a determination as to who meets the statutory test for being Principal Accountable Person in the building. The tribunal's determination would bind that person to act as the Principal Accountable Person and be liable for the obligations on a Principal Accountable Person.

There may also be complex questions from a person who holds a legal estate in some part of the common part of the building such who the Accountable Person is for that part - this section can be invoked in these circumstances to allow the tribunal to decide and resolve complex issues

Registration and certificates

Section 76: Requirement for completion certificate before occupation

Effect

650 This Section creates an offence for an Accountable Person, as defined in section 72. This offence is allowing occupation of a single residential unit or more in part of a higher-risk building, as defined in section 65, for which they are the responsible Accountable Person, without a relevant completion certificate. This certificate will be evidence that the relevant building work complies with all applicable building regulations' requirements. This will apply to new builds; extensions to higher-risk buildings; and to building work that creates a higher-risk building.

651 Subsection (5) of this section gives the Secretary of State the power by regulations to set out the description of the completion certificates to which the offence in this section will apply.

Background

652 The Independent Review of Building Regulations and Fire Safety 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 subsequently carried out on them. Dame Judith Hackitt's recommendation was that duty holders meet applicable building regulations' requirements before starting building work and before occupation begins.

653 Under the new regime, Gateway two will take place at the current deposit of plans stage before building work starts. Gateway three will take place at the current completion certificate stage when building work is complete. At Gateway three, the duty holder will make a completion certificate application reflecting the "as-built" building. The Building Safety Regulator will assess the application, carry out a final inspection of the building work and, if satisfied, issue a completion certificate as evidence that the building work complies with all applicable building regulations' requirements.

654 A completion certificate must be issued before the Principal Accountable Person can subsequently register the building for occupation as required under section 76 of the Act. It will be an offence to occupy a building that has not been registered. The Act therefore creates a "hard stop" to occupation via section 76. The registration of higher-risk buildings however will be a one-off process. As buildings are often occupied in stages, this means that registration would not be a "hard stop" for subsequent phases of occupation.

655 This section ensures that the "hard stop" to occupation intended at Gateway three applies to high-rise residential buildings which are 18 metres or more in height, or at least seven storeys, including when buildings are occupied in phases.

Example

A new higher-risk building is to be occupied in phases where occupation commences in the completed part of the building while building work continues in the other parts of the building.

The Building Safety Regulator has issued a completion certificate for the completed part of the building under the Gateway 3 completion certificate application process. The Principal Accountable Person has then been able to register the building for occupation as it has the necessary completion certificate.

The building has multiple Accountable Persons and one of them begins to occupy another part of the building for which there is not a requisite completion certificate as evidence that the relevant building work complies with all applicable building regulations' requirements.

The Accountable Person who has permitted occupation of this specific part of the building without the necessary completion certificate can be prosecuted.

Section 77: Occupation: registration requirement

Effect

656 The Principal Accountable Person, as defined in section 73, must ensure that the higher-risk building is registered before it becomes occupied and commits an offence if they fail to do so. Subsection (2) sets out that is a defence for a Principal Accountable Person charged with an offence under this section to prove that they had a reasonable excuse for failing to register the building.

657 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 paragraph 24(2) of Schedule 22 of the Sentencing Act 2020). If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years'

imprisonment. Any fine placed on the Principal 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

658 This is a new provision.

659 It enables the Building Safety Regulator to take a systematic approach to the oversight of buildings in scope of the new regime. 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 section 71. 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

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

For existing occupied buildings, the Principal Accountable Person will be required to register their building within a transitional period following the new regulatory regime coming into force. If the Principal Accountable Person fails to register the building within that period, they will commit an offence, as detailed above, unless they have a reasonable excuse.

Information required in the registration process will be set out in regulations and will likely include core details of the building, details of the Accountable Persons, Principal Accountable Person, and an address in England or Wales at which notices can be served on the Principal Accountable Person/Accountable Persons. Regulations will also set out a requirement for the Principal Accountable Person to inform the regulator in the event of any updates or changes to information provided in the initial registration application, which the regulator will use to keep the register up to date. The process is likely to be digitalised.

Information obtained from registration will allow the regulator to produce the national register of higher-risk buildings, and will also ensure the Accountable Persons are identified to the regulator. This information will also be used to support the regulator in prioritising its notifications to the Principal Accountable Person requiring an application for a Building Assessment Certificate, as set out in section 79.

Section 78: Registration of higher-risk buildings

Effect

660 This Section makes provisions for registration, and applications that must be made by the Principal Accountable Person.

661 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 in a manner it considers appropriate. Buildings may be removed from the register where they are no longer occupied or are no longer a higher-risk building as set out in section 65.

662 Subsection (4) allows the Secretary of State, through regulations, to make provision about the register, including the information that it contains the procedure for updating or otherwise revising the register and the procedure for removing a building from the register.

663 Subsection (5) 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

664 This is a new provision.

665 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.

666 An important recommendation from the Independent Review was that the name and UK 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 this information to the Building Safety Regulator will likely be accomplished through secondary legislation made under this section. The regulator will also be responsible for keeping the register up to date should any information provided at registration subsequently change.

Example

Before new buildings become occupied, the Principal Accountable Person will need to come forward and register their details and that of the higher-risk building with the Building Safety Regulator. For existing occupied buildings, the Principal Accountable Person will be required to register their building following a transitional period once the new regulatory regime comes into force.

Once the applicant has met the requirements of registration, the Building Safety Regulator will add them to the building register. The Building Safety Regulator will publish the register.

Information required in the registration process will be set out in regulations and will include core details of the building, details of the Accountable Persons, Principal Accountable Person, and an address in England or Wales at which notices can be served on the Principal Accountable Person/Accountable Persons. The process is likely to be digitalised.

Information obtained from registration will allow the regulator to produce the national register of higher-risk buildings, and will also ensure the Accountable Persons are identified to the regulator. This information will also be used to support the regulator in prioritising its notifications to the Principal Accountable Person requiring an application for a Building Assessment Certificate, as set out in section 79.

Section 79: Occupied building: duty to apply for building assessment certificate

Effect

667 As part of the new building safety regime, the Principal Accountable Person will be responsible for registering the higher-risk buildings that they are responsible for with the Building Safety Regulator (see section 77 for the obligation to do so). The Principal Accountable Person will also be required to apply for a Building Assessment Certificate as per this section.

668 This section allows the Building Safety Regulator to require applications for the Building Assessment Certificate. This section will enable the regulator to issue a notification to the Principal Accountable Person, directing them to apply for the Building Assessment Certificate. The Principal Accountable Person must then apply for the Building Assessment Certificate within 28 days of the notice being given.

669 Failing to apply for a certificate in the requisite timescale, when directed to do so by the Building Safety Regulator, without a reasonable excuse, will be an offence. If found liable on summary conviction a Principal Accountable Person can face an unlimited fine or imprisonment up to 12 months, or both; and on conviction on indictment can face a fine, imprisonment for up to 2 years, or both. In relation to an offence committed before paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into force, the reference to 12 months is to be read as a reference to 6 months.

Background

670 This is a new provision.

671 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 Assessment Certificate, and the building assessment that follows, provides a mechanism for the Building Safety Regulator to assess whether the dutyholders are, at that point in time, complying with the relevant Part 4 duties. The Building Assessment Certificate provides a transparent outcome to that assessment

Example

Building Assessment Certificates issued by the Building Safety Regulator are intended to provide an indication to residents that the regulator assessed the Accountable Person(s) for their building to be meeting specified statutory requirements at the time of assessment. The statutory requirements include, among others, that reasonable steps are being taken under section 84 to prevent building safety risks materialising and to reduce the severity of any incident resulting from such a risk materialising.

The circumstances and likely timings under which a Principal Accountable Person can expect the Regulator to issue the notice requiring them to apply for certification (the "call-in") will be set out in the regulator's Strategic Plan, which the regulator must follow, and which will be approved by the Secretary of State. For any building that passes through Gateway three and is registered, the call-in will likely be within a defined period following occupation. For existing occupied buildings, the regulator will be able to create tranches of buildings, for assessment according to tranche, calling in buildings in stages over an extended period. Existing buildings will likely be tranched according to factors such as height and other risk factors. It is intended that all existing occupied buildings will be initially assessed over a 5-year period.

The Building Safety Regulator's approach to calling in existing buildings in tranches will necessarily be flexible to accommodate emerging risk factors and intelligence, allowing buildings to be called in earlier than originally outlined in the Strategic Plan in some cases, if necessary. Should the regulator's overarching approach to tranching shift as a result, the regulator would revise its Strategic Plan to reflect the updated operational timescales.

The Building Safety Regulator will also be responsible for calling in buildings for reassessment periodically. A maximum period by which the regulator must assess any given building for its Building Assessment Certificate will be set out in regulations made by the Secretary of State. Within this maximum period, the regulator will be able to take a risk-based approach to calling in buildings for reassessment, and this approach will be outlined in the Strategic Plan. There may be scenarios under which reassessment is automatically triggered, such as a significant refurbishment, and these circumstances will also be set out in the Strategic Plan.

A Building Assessment Certificate will not be issued by the Building Safety Regulator if the Accountable Person(s) are failing to meet the specified statutory obligations, save for where the regulator considers that the breach can be remedied promptly and is done so, further to the terms of a notice issued pursuant to subsection (4) of this section.

Section 80: Applications for building assessment certificates

Effect

672 This section sets out the requirements with regards to the types of information and documentation that needs to be submitted by the Principal Accountable Person with their application for a Building Assessment Certificate as set out in Section 79. Subsection (1) sets out that the application must include: a copy of the most recent Safety Case Report, prescribed information about the Mandatory Occurrence Reporting System, prescribed information that demonstrates the Accountable Persons are meeting their duties with regards to provision of information, and a copy of the resident engagement strategy, as set out in section 91. The Secretary of State has the power to make regulations prescribing the information set out in this subsection. Subsection (2) allows the Secretary of State to make further provisions regarding the application process by regulations. This includes the form and content, the way in which the application should be made, and anything that must accompany it and circumstances and method of withdrawal of applications.

Background

673 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 Building Assessment Certificate is a mechanism that allows the Building Safety Regulator to assess whether, at the time the application is considered, the Accountable Persons are complying with the relevant duties placed on them. The issuance of the certificate by the regulator provides assurance that the Accountable Persons are meeting their requisite statutory obligations at that time.

Example

This section sets out some of the documents that must be provided with an application for a Building Assessment Certificate, including a Safety Case Report, where the most recent one has not already been provided to the Regulator. It is intended that the Secretary of State will also make regulations setting out other documents and information that will be required, along with practical details such as how an application will be made.

The Building Safety Regulator will assess the documents provided as part of the application for the Building Assessment Certificate and decide whether Accountable Persons are complying with all relevant duties.

Section 81: Building assessment certificates

Effect

674 Once the Principal Accountable Person has applied for a Building Assessment Certificate, pursuant to a direction and as required by section 79, subsection (2) of this section requires the Building Safety Regulator to assess whether the relevant duties are being complied with. This subsection also enables the Building Safety Regulator to inspect the building in connection with that assessment.

675 The Building Safety Regulator must issue a Building Assessment Certificate if it is satisfied that, at the time of assessment, the Accountable Persons for the building are complying with the relevant statutory obligations. If the Building Safety Regulator is not so satisfied, it must refuse to issue the Building Assessment Certificate, unless subsection (4) applies; if so, it must notify the Principal Accountable Person. Subsection (3) details these duties on the regulator.

676 Subsection (4) makes provision for the regulator to issue a notice to the Principal Accountable Person if it finds that a relevant duty is not being complied with on assessment, but the regulator considers that it can be remedied promptly. This allows for the Building Safety Regulator to issue a Building Assessment Certificate if, notwithstanding a breach of relevant compliance, the contravention is rectified promptly according to the terms of the regulator's notice.

677 The obligations on the Principal Accountable Person and Accountable Persons are detailed in subsection (5) and include duties to: assess building safety risks under section 83; manage building safety risks under section 84; produce a Safety Case Report under section 85; comply with the Mandatory Occurrence Reporting System under section 87(4); provide information to the regulator, residents and other persons under section 88; and produce a Residents' Engagement Strategy under section 91.

678 Subsection (6) gives a power to the Secretary of State to set out, in regulations, the matters pertaining to the notices in this section and the Building Assessment Certificate, including form and content, and the way in which they are to be given, and the period in relation to which a certificate must be given.

Background

679 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 Assessment Certificate help to ensure statutory obligations under the new regime are being met, by confirming that at the time of assessment, the regulator was satisfied that the Accountable Persons were complying with the relevant statutory obligations.

Example

The way in which the Principal Accountable Person can expect to be issued notices and certificates by the regulator, under this section, will be set out in regulations. The information that will be included on the Building Assessment Certificate will also be set out in regulations. This is likely to include the date on which the assessment was carried out by the regulator, and details of the Accountable Person(s) at the time of assessment.

Once the Principal Accountable Person has applied for the Building Assessment Certificate by submitting the prescribed information and documents to the Building Safety Regulator, the regulator will consider the application and decide whether the relevant statutory duties are being complied with at the time of assessment. The regulator may also undertake an inspection of the building before making its decision.

If the Building Safety Regulator is satisfied that all relevant duties are being complied with at the time of assessment, then the regulator must issue the Building Assessment Certificate.

If the regulator finds a relevant duty is not being complied with on assessment, but the regulator considers that it can be remedied promptly, then it may issue a notice to the Principal Accountable Person instead of immediately refusing the application for the Building Assessment Certificate. The notice to the Principal Accountable Person will briefly describe the contravention and specify a short period by which the contravention should be remedied. If the Principal Accountable Person complies with the notice, and the contravention is remedied within the specified period, then the regulator may issue the Building Assessment Certificate. If the contravention is not remedied within the specified period, then the regulator must refuse to issue the certificate.

Under section 82, once the Building Assessment Certificate has been issued by the Building Safety Regulator, it must be displayed in a prominent place within the building.

Section 82: Duty to display building assessment certificate etc

Effect

680 This section places a duty on the Principal Accountable Person to display the building's most recent Building Assessment Certificate, any relevant compliance notice, and a prescribed notice.

681 Subsection (1) places a duty on the Principal Accountable Person to display together several documents in a conspicuous position within the building. Paragraph (a) requires that a notice, in a form and containing information prescribed in regulations made by the

Secretary of State, about the Accountable Person, is displayed. Paragraph (b) requires that the most recent Building Assessment Certificate for the building is displayed. Paragraph (c) requires that any relevant compliance notices issued by the Building Safety Regulator are displayed.

682 Subsection (5) defines a "relevant" compliance notice as a compliance notice that has been given to an Accountable Person, where the regulator has provided a copy to the Principal Accountable Person (if the notice was not given to the Principal Accountable Person), and where the regulator has not notified the Principal Accountable Person that the notice has been withdrawn.

683 The Building Safety Regulator may place a building in special measures by applying to the First-tier Tribunal for an order appointing a Special Measures Manager. Subsection (2) places a duty on the Principal Accountable Person not to display the Building Assessment Certificate for the building when such an order is in force. The requirements to display a notice about the Accountable Persons still applies.

684 Failure by the Principal Accountable Person to comply with the requirements to display in subsection (1) or the requirement to not display a Building Assessment Certificate in special measures in (2)(b), without a reasonable excuse, is an offence. If found liable on summary conviction the Principal Accountable Person can face an unlimited fine or imprisonment up to 12 months, or both; and on conviction on indictment can face a fine, imprisonment for up to 2 years, or both. In relation to an offence committed before paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into force, the reference to 12 months is to be read as a reference to 6 months. In either case, the Principal Accountable Person would be liable to pay a daily fine following conviction until the duty is complied with.

Background

685 This is a new provision.

686 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 Assessment Certificate help to ensure statutory obligations under the new regime have been met, by confirming that at the time of assessment, the regulator was satisfied that the Accountable Persons were complying with all the relevant statutory obligations.

687 The duty to display the Building Assessment Certificate ensures that residents are informed about the Building Safety Regulator's most recent assessment of their building, and are assured that at the time of assessment, the regulator was satisfied that all relevant statutory duties were being complied with.

688 The duty to display a notice containing the name and contact details of the Accountable Persons ensures residents know who is responsible for oversight and managing the building safety risks for their building, and how to contact them to raise any concerns.

689 The duty to display a relevant compliance notice ensures that residents are informed about any subsisting concerns of the Building Safety Regulator about the building.

Example

This section requires the Principal Accountable Person to display several documents in a conspicuous position within the building, primarily so that they can be viewed by residents.

Once the Building Safety Regulator has issued the Building Assessment Certificate, the Principal Accountable Person must display it in a conspicuous position within the building.

Alongside the Building Assessment Certificate, the Principal Accountable Person will need to display a notice containing prescribed information about the Accountable Persons. The information to be contained in the notice and the form it must take will be specified in regulations. It is intended that it will specify the name(s) and contact details of the Accountable Person. This will provide transparency to residents and owners of residential units in the building, so that they know who is responsible for managing the building safety risks for their building, and how to contact them to raise any concerns.

Finally, the Principal Accountable Person must display any relevant compliance notices issued by the Building Safety Regulator. A "relevant compliance notice" is defined in this section as a compliance notice that has been given to an Accountable Person, one which the regulator has provided a copy of to the Principal Accountable Person, and a compliance notice where the regulator has not informed the Principal Accountable Person that it is withdrawn. If the compliance notice is issued to an Accountable Person who is not the Principal Accountable Person, the regulator will issue a copy of the notice to the Principal Accountable Person, who will have a duty to display it in the building.

The Building Safety Regulator may place a building in special measures by applying to the First-tier Tribunal for the appointment of a Special Measures Manager. The Tribunal may issue a Special Measures Order, as detailed in Schedule 7. This section ensures that, while a Special Measures Order is in place, the building's Building Assessment Certificate is not displayed, thereby signalling clearly that the Special Measures Order prevails over any previous assessment of the building by the regulator. Similarly, the Special Measures Order causes any previous compliance notices to cease to have effect, save for the liability prior to the order being made, as detailed in Schedule 7. Any withdrawn compliance notices would no longer be displayed.

The Building Safety Regulator will undertake building re-assessments periodically. When a re-assessment is undertaken, the regulator will issue a new certificate if it is satisfied that all relevant duties were being complied with. The Principal Accountable Person must display the most recent Building Assessment

Certificate in lieu of the old one, so that any previous certificates issued will be taken down, having been superseded by the most recent certificate

Duties relating to building safety risks

Section 83: Assessment of building safety risks

Effect

690 This section provides that every Accountable Person is under an ongoing obligation to carry out an assessment of the building safety risks in/of/arising from, and relevant to, the part of the higher-risk building for which they are responsible. The definition of building safety risks is that provided for in section 65.

691 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 managing building safety risks and providing information about the building to other persons (under section 84 and section 89 respectively). The assessment must include consideration of hazards that originate in an area outside their responsibility developing into a risk which enters the area for which they are responsible.

692 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.

693 Further assessments must be carried out by the Accountable Person at regular intervals, when directed to do so by the Building Safety Regulator, when the Accountable Person suspects the assessment is no longer valid, or they become aware of a significant change to the building.

694 The Accountable Person is defined in section 72 as a person with a legal estate in possession of any part of the common parts of a higher-risk building or a person who does not hold legal estate but is under a relevant repairing obligation in relation to any common parts. The definition of occupied is set out in section 71.

695 Where there are multiple Accountable Persons within a building it is expected that they will co-operate and co-ordinate with every other Accountable Person carrying out their obligations. This includes their carrying out their risk assessment duties under this clause and sharing information about building safety risks relating to the whole building in good time.

Background

696 This is a new provision.

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

698 The Independent Review recommended new responsibilities be placed on dutyholders to proactively manage risks and work with residents (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 this clause.

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, deciding who might be harmed by those hazards, evaluating the likelihood and consequence of those hazards developing into a building safety risk, deciding on the measures that are needed to lower the risks of the hazards becoming a building safety risk to an acceptable level, deciding what measures are needed to mitigate further risk of harm to residents in the event a building safety risk is realised and ensuring those measures remain fit for purpose whilst the building is occupied. The Accountable Person should review their assessment of the risks where there has been a significant change to matters which may impact on the spread of fire or structural collapse, and their management of those risks. 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.

Example 2

The following would 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 Accountable Person has scheduled a review of the building's risk assessment 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). No new foreseeable causes of escalation are found and that the existing control and mitigation measures are adequate to deal with the identified potential causes of fire spread, and their cumulative effect. They schedule a further review in 3 months.

Example 3

The Accountable Person reassesses the building safety risks when there has been

a significant change in the building, for instance when refurbishment work was carried out, such that a previously in-use alarm system was taken out of use; or when new residents with mobility impairments move in meaning that assumed compartmentation that relied on residents having the ability to escape fire/respond to emergencies in certain ways which no longer applied.

Example 4

The Accountable Person reviews their assessment of the risks as there has been a significant change to matters which may impact on the spread of fire or structural collapse and their management of those risks, due to the change to the timing of bin collections which means that a bin store is no longer big enough to store all the building's cumulative waste for the whole period between collections, with the potential for rubbish bags 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.

Section 84: Management of building safety risks

Effect

699 This clause imposes an ongoing duty on Accountable Persons to take all reasonable steps and actions necessary to manage building safety risks, (which are defined in Clause 62, preventing them materialising in their building and to mitigate the severity of such an incident if it does occur.

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

701 This duty will run parallel to that of needing to undertake a suitable and sufficient risk assessment, under clause 82.

702 To make informed decisions, the Accountable Person should have identified the relevant hazards to their building in accordance with their risk assessment duty, decided who might be harmed by those hazards and evaluated the likelihood and consequence of those hazards developing into a building safety risk within the part of the building for which they are responsible. 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 risk of fire spreading, structural collapse and any other prescribed matter and to mitigate the severe impact of such an incident on those in or around the part of the building for which they are responsible.

703 When deciding on the measures needed to meet the duty, Accountable Persons 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.

704 Where those measures prove insufficient, the Building Safety Regulator will have the power to direct Accountable Persons to take the steps needed in order to comply with the duty through a compliance notice issued under Clause 99.

705 The Accountable Person is under an ongoing duty to ensure these measures are kept under review and Subsection (5) requires a systematic approach, that is used in other risk management frameworks, to be adopted to ensure the Accountable Person fully understands the measures employed and that those measures remain appropriate and effective whilst the building is occupied.

706 Where there are multiple Accountable Persons within a building it is expected that they will co-operate and co-ordinate with every other Accountable Person carrying out their obligations. This includes taking steps under this clause jointly/in co-ordination with other Accountable Persons, and jointly setting up and agreeing processes for adopting a systematic approach to ensuring the measures employed remain effective. The outcome should be that the safety arrangements across the whole building will work together (or at a minimum not conflict) to manage building safety risks.

Background

707 This is a new provision.

708 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.

709 The Independent Review recommended new responsibilities be placed on dutyholders to proactively manage risks and work with residents (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 this clause. 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 takes on management of a higher-risk building and when the first residents move in, sets about assessing the building safety risks. They undertake an assessment of building safety in accordance with the duty to undertake a suitable and sufficient risk assessment. Golden thread and Gateway information is used 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 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 Accountable Person realises that the training materials are out of date and require updating. The induction pack is updated across the organisation and tailored to accurately reflect specific buildings. The Accountable Person makes resident safety the focus of the induction pack and uses the content to populate sections of the Resident Engagement Strategy. As part of the system for ongoing management of risk, the Accountable Person 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, as a first step, needs 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 knows 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, for instance 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 Accountable Person 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

The Accountable Persons undertakes ongoing steps to meet the section 84 duty:

A resident notifies the Accountable Person that combustible materials are being stored in common areas. A spot check is undertaken, and empty cardboard boxes are found stacked in a stairwell. The boxes are removed, and a reminder notice is put on the resident's internet pages, the preventative signage prohibiting storage in common areas is improved scheduled walkthroughs of the common areas are increased both in terms of time and frequency.

Example 4

The risk assessment undertaken for the purposes of complying with clause 82 highlights the necessary steps to reduce (or further reduce) building safety risks.

The building safety risks are assessed as a part of a planned regular assessment. It is clear 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, fire shutters on fusible links are fitted to the base of the chute, and 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

are installed. The resident internet pages are updated to advise residents of the actions taken and to remind them not to throw any hot materials (including cigarettes) down the chutes. The safety signs in each chute room are also improved.

At a regular site inspection, it is identified 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. Residents are notified that the barrier will be replaced, a competent company is contracted to replace the barrier, and, in the meantime, cones are put out 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 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 padlock is replaced with a keypad system, the scheduled inspections are made more frequent, the resident internet pages are updated and all warning signage on services risers are made more prominent.

Section 85: Safety Case Report

Effect

710 This section provides that the Principal Accountable Person is under a duty to produce a Safety Case Report that demonstrates that building safety risks have been both assessed and all reasonable steps have been taken to prevent building safety risks, defined in section 65, materialising in the building and to mitigate the severity of such an incident if it does occur.

711 The duty to prepare a Safety Case Report containing an assessment of the building safety risks relating to the building and any steps taken under clause 83 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.

712 Once the Principal Accountable Person has written their Safety Case Report, they must notify the Building Safety Regulator, under clause 86.

713 The Safety Case Report will be the vehicle through which Accountable Persons are able to demonstrate compliance with their ongoing duty to prevent fire spread and structural collapse and reduce the severity of any incident. The clause provides a duty on the Principal Accountable Person to revise it following any further assessments of the building safety risks relating to the building under section 83 and following the taking of any further steps under section 84. The intention is that at any point the Safety Case Report demonstrates that the arrangements Principle Accountable Person/Accountable Persons have in place are

reasonable for managing the specific building. Where there is a change to the Principal Accountable Person, it is expected that the new Principal Accountable Person will prepare a revised Safety Case Report, reflecting their assessment and risk management practices, including policies and procedures, as soon as reasonably practicable after becoming the Principal Accountable Person.

714 The Safety Case Report can be reviewed and revised under a Principal Accountable Person's own volition, however the Building Safety Regulator, under this clause, can direct an Accountable Person to undertake an assessment of building safety risks, which in turn may result in additional safety arrangements being required and the Safety Case Report having to be reviewed and revised.

715 Where there are multiple Accountable Persons in a building, it is required that there should be a single Safety Case Report to be produced by the Principal Accountable Person for that building. It is intended that all Accountable Persons in the building should co-operate and co-ordinate carrying out their obligations. This includes carrying out their risk assessment and risk management duties and sharing information about building safety risks relating to the whole building in good time to enable a single Safety Case Report to be produced.

Background

716 This is a new provision.

717 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 sets 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 and managing building safety risks.

718 The new "safety case review" system is therefore the main way that the Building Safety Regulator will hold the Principle Accountable Person/Accountable Persons to account for identifying the hazards and risks in their building, describing how risks are controlled and 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, and reduce the impact should an incident occur. Safety case reports will be reviewed by the Building Safety Regulator as part of the Building Assessment Certificate application process.

719 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 a safety case review system, the dutyholder provides information to the regulator to demonstrate that they have considered what could go wrong, 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. This is an ongoing process, and the safety case is reviewed often and when a significant change has occurred to ensure the management systems in place remain relevant. .

720 As part of their Safety Case report, the Accountable Person will need to set out that the building is safe for occupation (i.e., meets the outcome of clause 84), through the sum of the measures they have in place to 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.

Overview

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.

It is the Safety Case Report in this regime that is the key document and will be required for all occupied high-rise residential buildings. The Accountable Person will produce a safety case report following an assessment of building safety risks and the taking of reasonable and proportionate steps to ensure those risks are managed on an ongoing basis. The Report should provide a summary of the risk assessment and safety measures across the building and will need to comply with the content requirements set out in secondary legislation. It will need to be submitted to the Building Safety Regulator, most often as part of an application for a Building Assessment Certificate.

Example

The Principal Accountable Person has written their safety case report, submitted it to the Building Safety Regulator and obtained a Building Assessment Certificate. After a period of time, they undertake a scheduled review of their assessment of building safety risks in the building.

This review identifies an issue not previously accounted for, and the Principal Accountable Person concludes that they should introduce an additional safety measure to ensure the risk is controlled. The documentation and data created as part of the revised risk assessment and introduction of reasonable additional safety measures are part of the wider safety case, so the Principal Accountable Person revises the Safety Case Report to ensure it presents an accurate reflection of the building.

They then notify the Building Safety Regulator that they have updated their safety case report. The Building Safety Regulator requests that the report be submitted for review, as the changes made regarding the assessment of building safety risks and steps in place to manage them have changed significantly.

Section 86: Notification and provision of report to the regulator

Effect

721 As soon as the Principal Accountable Person has complied with the duty to produce a Safety Case Report as described in section 85, they must notify the Building Safety Regulator. The notification must be sent as soon as reasonably practicable.

722 When a Safety Case Report is revised, owing to a change in the assessment of building safety risks, a change to an Accountable Person in the building, or a change to the steps being taking to manage building safety risks, the Principal Accountable Person must notify the Building Safety Regulator.

723 This section also provides a power for the Building Safety Regulator to require the Principal 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 Principal Accountable Person as soon as is reasonably practicable.

724 This section 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

725 This is a new provision.

726 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.

727 The Building Safety Regulator's assessment of safety case reports is one of the main ways Accountable Persons will be held to account. Safety case reports will need to demonstrate that potential building safety risks have been properly assessed and that proportionate measure are in place to reduce and control them on an ongoing basis. Safety case reports will be reviewed by the Building Safety Regulator as part of an application for a Building Assessment Certificate.

Example 1

In the context of a high-rise residential building already in possession of a Building Assessment Certificate, following a change in the assessment of building safety risks, the Principal Accountable Person updates their safety case report. Once the report has been amended, the Principle Accountable Person notifies the Building Safety Regulator.

The Building Safety Regulator decides to assess the Safety Case Report at this stage, rather than waiting until the Principal Accountable Person is required to apply for a renewal of the Building Assessment Certificate, as described in Section 80, due to the extent of the changes made to the Safety Case Report.

Example 2

The Building Safety Regulator requests a copy of a Safety Case Report from a Principle Accountable Person, because an incident in another building for which they are responsible reveals that building safety risks had not been properly considered and as a result of the incident, recommendations have been made.

If the Building Safety Regulator requests a copy of the Safety Case Report, it is likely that an update will be required. The review of the Safety Case Report by the Building Safety Regulator requires there to be an update to the current assessment of building safety risks for that building, and where needed further steps are taken to manage the risks.

Example 3

An Accountable Person notifies the Building Safety Regulator that they have made revisions to the Safety Case Report for a building for which they are responsible, to accommodate new steps they have taken in the light of recommendations from an inquiry. Upon receiving the notification, the Building Safety Regulator requests submission of the revised Safety Case Report and assesses it. The regulator is not confident from their assessment that the steps taken are sufficient and decides to inspect the building to investigate further. The inspection confirms that the steps employed are insufficient and the Building Safety Regulator works with the Accountable Person to ensure all reasonable steps are in place. If needed the regulator could direct the Accountable Person to take these measures under section 84 and/or to issue a compliance notice under section 99 which requires that contraventions of the Accountable Person's obligations are remedied, but in this instance these enforcement actions are not needed.

Duties relating to information and documents

Section 87: Mandatory reporting requirements

Effect

728 This clause will place a duty on the Principal Accountable Person to establish and operate an effective mandatory occurrence reporting system and a further duty on Accountable Persons to ensure reportable information related to the safety of an occupied building is given to the Building Safety Regulator in a manner specified by the Building Safety Regulator. The system will be assessed as part of the Building Assessment Certificate application.

729 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.

730 Information submitted in an occurrence report cannot be used as evidence in criminal proceedings against any person, except in relation to specific circumstances as laid out in the clause. Information from reports can be used by defendants in their own defence. An equivalent provision will be made in building regulations for the design and construction phases.

Proposed use of power

731 It is intended that the power given to the Secretary of State will be used to require Accountable Persons to report certain structural and fire safety occurrences to the Building Safety Regulator, similar to those duties that exist in other industries such as aviation. This will involve reporting to the Building Safety Regulator any structural or fire safety event that occurs in or about the part of a higher-risk building for which the Accountable Person is responsible and which represents a significant risk to life safety. Mandatory occurrence reporting will complement voluntary occurrence reporting, which will capture safety occurrences not of a high enough risk to be required reporting under mandatory occurrence reporting.

732 Secondary legislation will prescribe which occurrences which must be reported to the Building Safety Regulator. This will be 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 Accountable Persons to assist them in determining whether an occurrence must be reported as laid out in secondary legislation.

733 The specified manner of reporting will likely be via an online portal. Current proposals for the timeframe for reporting are an immediate notification to the regulator as soon as a mandatory occurrence is identified, followed by a full report as soon as practicable and not later than ten calendar days from the time of the occurrence being identified.

734 The occurrences specified in secondary legislation may include the discovery of a structural safety or fire safety related defect.

Background

735 This is a new provision.

736 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
> A discarded cigarette starts a fire in the bin room of a higher-risk residential building. Smoke is detected by sensors and the bin chute plates automatically close to provide compartmentation, but the plates have not been appropriately tested and are not of the correct specification. As a result, smoke is allowed to pass up the bin chutes and into resident's rooms. This presents a significant risk to life safety. A resident reports the incident through the building's mandatory occurrence reporting system. The Accountable Person responsible for the area where the incident occurred immediately notifies the Building Safety Regulator that a mandatory occurrence has been identified, and a full report is sent to the regulator as soon as is practicable and no later than ten calendar days from the occurrence being identified. Upon receiving the report, the regulator could, at its own discretion, use it as a basis for further investigation or enforcement measures. Such a report would also help the regulator to identify potential trends of similar such incidents across the sector. Additionally, valuable lessons learnt contained within the report could be shared with industry by the regulator, helping others to proactively identify and resolve similar issues on other sites and improve best practices across the sector.

Section 88: Keeping information about higher-risk buildings

Effect

737 The new regulatory regime will regulate building safety risks in higher-risk buildings. This section places requirements about information keeping on the person responsible for higher-risk buildings – the Accountable Person. Higher-risk building is defined in section 65.

738 This section 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 section imposes a requirement that they obtain this information, unless it is not practicable for them to do so.

739 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.

740 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 section 62) in the building.

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

742 The Building Safety Regulator will also be able to issue statutory guidance about how to comply with the duties in this section under the power set out in section 108(1)(c). The guidance will provide best practice examples and detail to support the Accountable Person in fulfilling their duties under this section and the regulations.

743 Regulations may also be made under this section to set out when the duties to keep and obtain the prescribed information will apply.

Proposed use of power

744 Regulations made under this section 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

745 This is a new provision.

746 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.

747 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 sections 83-86.

Example

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 section 83. 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.

Section 89: Provision of information etc to the regulator, residents and other persons

Effect

748 This section 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. This section enables the Secretary of State to make regulations to set out the manner, form and standards which must be met in provision of this information and documentation.

749 This section sets out that the Accountable Person may be required to provide prescribed information, or copies of that information, to the Building Safety Regulator, to other Accountable Persons in the building, to residents of the building and owners of flats in the building, or other prescribed persons. This section allows regulations to be made setting out the other prescribed persons which means the other types of person who the information and documentation should be supplied to.

750 This section also enables the Secretary of State to make regulations to set out exceptions to any duty imposed under any regulations made under this section.

751 Residents means all adults (aged 16 or over) lawfully residing at the property. This section also extends to the legal owner (where this is not the same as the residential occupier) of an individual residential unit, for example a non-occupying leasehold landlord who is renting out an individual flat.

Proposed use of this power

752 Regulations under this section will set out the circumstances in which an Accountable Person for a higher-risk building must provide others with prescribed information and documentation about the building. This will include a requirement that the Accountable Person has to provide all new residents with a range of building safety information. Regulations will also set out other circumstances in which the Accountable Person is required to provide residents with information and, requirements for the Accountable Person to provide the regulator with information about the building.

753 Regulations will also detail information that will need to be shared with the Regulator to enable it to effectively regulate and oversee buildings in scope. This will include a provision requiring the Accountable Person to notify the Regulator when it appoints an insolvency practitioner (administrator, trustee in bankruptcy, liquidator) under the Insolvency Act 1986. This will help enable the Regulator to effectively regulate and oversee buildings in scope

754 Regulations under this section 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.

755 Regulations will also detail information that will need to be shared with the Regulator to enable it to effectively regulate and oversee buildings in scope. This will include a provision requiring the Accountable Person to notify the Regulator when it appoints an insolvency practitioner (administrator, trustee in bankruptcy, liquidator) under the Insolvency Act 1986.

Background

756 This is a new provision.

757 The Independent Review identified the importance of accurate and up to date information for ensuring building safety. Access to information is essential and this provision ensure that the Accountable Person is required to share prescribed information in certain circumstances.

758 Regulations will include requirements on the Accountable Person to share specified information with residents, the regulator and other prescribed persons. 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 section and section 88 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.

759 Regulations will include a requirement on the Accountable Person to share specified details about the Insolvency Practitioner with the Regulator to ensure that it has a complete picture the state of affairs of the individual or company and to help to ensure the ongoing safety management of the building whilst insolvency proceedings are progressed.

760 Regulations under this section 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

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.

Section 90: Provision of information etc on change in Accountable Person

Effect

761 This section applies where the Accountable Person for a higher-risk building changes. It relates to section 88, and regulations made under that section 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.

762 This section sets out requirements on the "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. These requirements are that outgoing Accountable Person must provide certain information, or copies of certain documents, to their successor, the "incoming" Accountable Person and to the Regulator. This section gives the Secretary of State the power to issue regulations setting out the information and documents (or copies of documents) that must be provided by the outgoing Accountable Person to their successor 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.

763 This section also allows the Secretary of State to issue regulations to set out what information needs to be given by the outgoing Accountable Person to the Regulator.

764 This section also gives the Secretary of State the power to issue regulations setting out that disclosure of information to the "incoming" Accountable Person or the Regulator under this section does not breach— any obligations of confidence owed by the outgoing person in relation to that information. Not complying with these requirements will be an offence with a maximum penalty of an unlimited fine and/or 12 months' imprisonment in the magistrates' court (six months until the commencement of paragraph 24(2) of Schedule 22 of the Sentencing Act 2020). If tried in the Crown Court, the maximum penalty will be an unlimited fine and/or two years' imprisonment. 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 no more than a level 1 fine (currently £200).

Proposed use of power

765 Regulations under this section will set out the circumstances in which an Accountable Person for a higher-risk building must hand over the prescribed information and documents (or copied of documents) about the building. In particular,

these will provide for when an outgoing Accountable Person must provide the prescribed information and documents (or copies of documents) to the incoming Accountable Person, what that information should contain and standards that it must accord with.

766 Regulations will also set out what information an outgoing Accountable Person must provide to the Regulator, when they have to provide it and in what manner. This will include informing the Regulator when there is a change in Accountable Person or Principal Accountable Person or changes in their contact details.

Background

767 This is a new provision.

768 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 and documentation 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.

769 It is also important that the Regulator is informed when there is a change in Accountable Person or change of Designated Accountable Person or a change to their contact details. Provisions made under this section will ensure that the Regulator is aware who is responsible for the safety of the building and has up to date contact details for this person or persons.

> Example
> 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.

Engagement with residents etc

Section 91: Residents' engagement strategy

Effect

770 This section requires the Principal Accountable Person, to produce and act in accordance with a Residents' Engagement Strategy. This is a strategy that should promote the participation of residents and owners of a residential unit (e.g. flat owners) in decision-making about building safety risks in their building. In preparing and implementing the Residents' Engagement Strategy we expect every other Accountable Person in the building (if there is more than one) to cooperate with the Principal Accountable Person as much as possible. The high-level requirements for the content of the Residents' Engagement Strategy are set out in subsection (3) and confirm that the strategy will need to contain:

- the information that will be provided to residents about decisions relating to the management of the building;
- the scope of what residents will be consulted on;
- the methods that will be used to seek residents' views; and
- details of how the appropriateness of the strategy will be measured and reviewed.

771 The Principal Accountable Person must review (and where necessary or appropriate revise) the Residents' Engagement Strategy at specified times which can be set out by the Secretary of State in regulations.

772 This section also requires the Principal Accountable Person to consult residents and owners of a residential unit on the Residents' Engagement Strategy itself in prescribed circumstances. Any representations received as part of this consultation must be considered when the strategy is next reviewed. The Secretary of State has the power to establish in regulations in what circumstances the strategy will be consulted on.

773 Each Accountable Person is responsible for providing a copy of the strategy to residents and owners of residential units in the part of the building for which they are responsible.

774 The Secretary of State has the power to make regulations to add to the requirements around the content of the Residents' Engagement Strategy. It is envisaged that these provisions will also be supported by Good Practice Guidance to provide practical help to Principal Accountable Persons in developing their Residents' Engagement Strategy including worked examples and templates, for which the Residents Panel should be one of the statutory consultees (see section 11).

Background

775 The purpose of the Residents' Engagement Strategy is to promote the participation of residents in building safety decisions that affect them and to make it clear to residents when and how they can expect to be involved.

776 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.

777 This requirement is designed to tackle that by placing an obligation on Principal Accountable Persons to have a Residents' Engagement Strategy that sets out how they will deliver inclusive and effective resident participation and involvement in relevant building safety decisions. Where there is more than one Accountable Person it is expected that Accountable Persons will cooperate with the Principle Accountable Person to agree the content of the Residents' Engagement Strategy and play a role in promoting participation in line with the strategy.

Section 92: Requests for further information

Effect

778 This section provides that an Accountable Person shall provide certain information or a copy of certain documentation to a resident or an owner of a residential unit (e.g. a flat owner) in a higher-risk building on request. This will supplement the building safety information that residents and owners of flats will be provided with automatically under section 89. A list of this building 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 and form in which information is provided.

779 The Secretary of State may also make regulations which set out the circumstances when an Accountable Person is exempt from the requirement to provide the information or document requested.

780 In a building managed by multiple Accountable Persons, each Accountable Person will be responsible for providing the requested information or copy of documents to residents and owners of residential units in the part of the building for which they are responsible. Accountable Persons have a duty under section 109 to co-operate and co-ordinate with the Principal Accountable Person in discharging their duties.

Background

781 The purpose of this section is to ensure that residents and owners of residential units in a higher-risk building can request additional information on building safety beyond the information they receive automatically. This is intended to allow residents and owners to access this information without making the initial provision of information overly burdensome on Accountable Persons.

782 In addition to recommending that residents should automatically receive key building safety information (see section 89), 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 building safety information that may be requested by residents of higher-risk buildings under this section will be set out in regulations and is currently envisaged to include the following:

- Fire risk assessments for the higher-risk building;
- Outcomes of Building Safety inspection checks for the higher-risk building;
- The detail as to how any details as to how building safety assets in the higher-risk building are managed;
- The detail of any details of preventive measures in place for the higher-risk building to prevent fire spread and/ or other building safety risks from occurring;

- Information on the maintenance of fire safety systems within the higher-risk building;
- The fire strategy for the higher-risk building;
- Any recent structural assessments for the higher-risk building; and
- Planned and historical changes to the higher-risk building which are relevant to building safety.

783 This section 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 purpose of this section is to ensure that providing of this information does not create new safety, security or privacy risks. The exemptions are anticipated to include information related to:

- 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.

784 Any disclosure made under this section will also have to comply with relevant data protection legislation.

Section 93: Complaints procedure operated by principal accountable person

Effect

785 This section requires the Principal Accountable Person to establish and operate a complaints system for the investigation of relevant complaints.

786 A relevant complaint in this section is defined in the Act as a complaint that relates to a building safety risk (as defined in section 62) as regards the building or the performance by an Accountable Person for the building of any duty under Part 4 of the or regulations made under it.

787 More detail on the requirements of the complaints system will be set out in secondary legislation, such as, but not limited to, how a complaint can be made, the way in which complaints must be handled and investigated and how a complaint can be escalated to the regulator.

788 Though the requirement for establishing and operating the complaints procedure sits with the Principal Accountable Person, in buildings managed by multiple Accountable Persons, we expect each Accountable Person to work with the Principal Accountable Person where

necessary. Accountable Persons will be responsible for putting right any issues relating to the performance of their building safety duties or issues in the part of the building they are responsible for.

Background

789 The purpose of this section is to make sure there is a clear route for escalating concerns about building safety in higher-risk buildings.

790 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 Principal Accountable Persons to have a system in place to receive and investigate relevant complaints, including the ability to refer a complaint to the regulator.

Section 94: Complaints procedure operated by the regulator

Effect

791 This section requires the Building Safety Regulator to establish and operate a complaints system for the investigation of relevant complaints, as defined in the Act, that are referred to the regulator through the Principal Accountable Person's complaints procedure or that are made directly to the regulator. Although complaints may be made to the regulator, the onus will always be on the appropriate Accountable Person to put right building safety issues that they are responsible for.

792 In establishing or making significant changes to their complaints system the Building Safety Regulator must consult with the Residents' Panel which will be established as one of the regulator's Advisory Committees – see section 11 for more detail.

793 The Secretary of State may by regulations make provision in relation to the establishment and operation of the regulator's complaints system.

794 A relevant complaint in this section is defined in the Act as a complaint that relates to a building safety risk (as defined in section 62) as regards the building, the performance by an Accountable Person of any duty under Part 4 of the Building Safety Act (or regulations made under it) or the performance by a Special Measures Manager for the building of a function conferred by a special measures order.

Background

795 The purpose of this provision is to increase access and transparency with regard to building safety redress, providing a clear route of accountability for building safety complaints to be addressed.

796 It is expected that building safety complaints will be handled by the Principal Accountable Person's complaint system and issues put right by the appropriate Accountable Person. This provision ensures that where this is not possible or the system fails, that building safety concerns will still be heard by the Building Safety Regulator.

797 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. The duties on the Principal Accountable Person and the Building Safety Regulator contained in the Act are designed to tackle that by requiring relevant complaints to be properly handled and investigated. Where building safety complaints are not resolved satisfactorily under the Principal Accountable Person's procedure this section allows for there to be a clear escalation route to the Building Safety Regulator.

Residents' etc duties

Section 95: Duties on residents and owners

Effect

798 This section provides that residents of a higher-risk building (aged 16 or over) and owners of residential units in higher-risk building must:

- not act in a way that creates a significant risk of a building safety risk materialising;
- not interfere with a relevant safety item; and
- comply with a request made by the appropriate Accountable Person for information reasonably required to perform their duties to carry out an assessment of building safety risks and to manage those risks.

799 The duties apply to residents of all tenures living in the building including but not limited to leaseholders, social housing tenants, and private renters; the duties also apply to non-resident owners of residential units. The duties are about residents' behaviours and actions, including in responding to requests for information from the appropriate Accountable Person to ensure they can assess and manage building safety risks.

800 The provision places a set of clear responsibilities on residents in relation to helping to keep their building safe, including ensuring that Accountable Persons can carry out their building safety duties. The Accountable Person is, by virtue of sections 95 and 96, able to enforce these duties by issuing contravention notices, which can be enforced through application to the courts.

801 "Relevant safety item" means anything in or which forms part of the common parts (as defined in section 71) of a higher-risk building that is intended to improve the safety of anyone in the building or in its vicinity in relation to a building safety risk. For example, signage, sprinklers, fire extinguishers etc. All residents (and owners of residential units) are required not to interfere with a relevant safety item, this means damaging it, removing it, or interfering with its intended function. This applies unless the resident has a reasonable excuse to "interfere" with the relevant safety item, for example: using a fire extinguisher to put out a fire.

Background

802 The purpose of this section is to ensure residents and owners of residential units in higher-risk buildings play their part in keeping buildings safe. The Independent Review recommended that residents should have a clear understanding of their responsibilities in relation to helping to keep their building safe.

Example

A resident's items are being stored in front of a fire exit in the common parts and are blocking access to the fire exit. This would be considered a breach of a resident's duties, as in the event of a fire, residents may not be able to safely evacuate through this fire exit due to the blockage, thereby interfering with the intended function of a safety item, the fire exit. In this instance the Accountable Person may investigate the matter in order to make sure residents' safety isn't being put at risk. As part of this investigation the Accountable Person would be able to require the resident to take action to address the breach of their building safety duties. This could include the Accountable Person issuing a contravention notice to the resident who has breached their duties.

Residents are required to comply with a request made by the appropriate Accountable Person for information reasonably required to perform their building safety duties. For example - An owner of a flat has replaced their front door which is a fire door. The owner did not inform their Accountable Person prior to carrying out these works and has not provided the Accountable Person with any information on the specification of the new door. Replacing a fire door could affect the passive fire safety systems and compartmentation. The Accountable Person in this instance would be able to request the specification of the door and any other pertinent information from the owner of the flat in order to assess whether the new door poses a building safety risk.

Section 96: Contravention Notices

Effect

803 This section enables an Accountable Person for an occupied higher-risk building to serve a notice on a resident or owner of a residential unit in their part of the building, where it appears to them that the person in question has not complied with one or more of the residents' duties under section 95. A notice under this section is a notice that specifies:

- the alleged breach of a duty;
- what the resident should do so that they are no longer in breach and a reasonable time 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.

804 Where the Accountable Person believes that a resident or owner has breached section 94(2)(b) (interfering with a relevant safety item) they may ask the resident to pay for the repair or replacement of that item if the repair or replacement is necessary. That sum must not exceed the reasonable costs of repair or replacement.

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

- a contravention notice has been given;
- the resident or owner of the residential unit has breached the duty alleged in that notice; and
- it is necessary to make the order.

806 An order made by the county court under this section may require a person:

- to provide specified information, or do a specified thing, within a certain time;
- not to do a specified thing; or
- to pay a sum if that has been requested, that sum cannot exceed the sum in the original notice.

807 The Secretary of State may by regulations make provision about contravention 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 a notice.

Background

808 The purpose of this section is to allow the Accountable Person to make sure residents and owners of residential units comply with their duties under section 95 in order to keep the higher-risk building safe. In many cases where a resident is in breach of their duties, it would be reasonable for Accountable Persons to discuss an alleged contravention with the resident first to try to resolve the matter before issuing a contravention notice.

809 The Independent Review recommended that residents should have a clear understanding of their roles and responsibilities to help to keep their building safe. Residents need to be made aware of the impact of their actions and their role in keeping their building safe. It is important for residents to understand that in certain circumstances their actions may pose a risk to the safety of their dwelling, their fellow residents, and the building they live in and that the Accountable Person has the ability to ensure residents comply with these duties.

810 The focus is on resident behaviours (and the behaviour of residential unit owners) and their co-operation with the Accountable Person in keeping the building safe. Where this fails the Accountable Person is able to investigate and enforce those duties.

Example

A resident continues to block a corridor with their belongings, despite previous communications from the Accountable Person on this matter. The corridor is an important escape route from the higher-risk building in the event of a fire. The Accountable Person issues a contravention notice. This notice sets out that the resident has breached one of their duties by blocking an escape route and requests that the resident removes their belongings immediately. The notice also mentions that failure to comply with the request in the notice would mean that the Accountable Person may make an application to the courts for an order.

Section 97: Access to Premises

Effect

811 This section provides that the county court may, following an application by the Accountable Person for an occupied higher-risk building, make an order to allow entry in respect of any premises in the part of the building for which the Accountable Person is responsible.

812 The premises referred to in this section refer to residential units or other spaces controlled by the owner or resident such as a garage or storage cupboard that does not form part of the residential unit.

813 The court must be satisfied that the order is necessary for the purpose as set out in the request. In requesting access, the Accountable Person must do so in accordance with principles prescribed in regulations under section 83.

814 Before the court makes an order it must ensure that it is satisfied that:

- the Accountable Person has made a written request, setting out its purpose and an explanation for why access is needed. It must also provide at least 48 hours' notice before access is required and access must be requested at a reasonable time;
- the request has been made in connection with the Accountable Person's duties under sections 83 or 84 to assess or manage building safety risks or in connection with a potential breach of a duty on residents and owners of residential units under section 95; and
- it is necessary to make the order for the purpose mentioned in the request for access.

815 An order made under this section may permit access for the purpose requested and, if necessary for that purpose, may permit the taking of measurements, photographs, recordings or samples.

816 If an order is made, it must specify a date or a time period during which the relevant person must allow the Accountable Person, or a person authorised by them, access to the premises.

817 A relevant person (aged 16 or over) includes the resident, or if the premises is not occupied, it may be the owner or a person controlling the premises.

Background

818 The purpose of this provision is to make sure the Accountable Person is able to secure access to a residential unit when required for managing or assessing a building safety risk. It is expected that in the majority of cases, residents and Accountable Persons will be able to agree on whether access is necessary and how it should be granted without a formal request under this provision.

819 Residents (aged 16 or over) and owners of residential units in higher-risk buildings are required, by virtue of section 95, to comply with three duties designed to ensure that residents play their role in ensuring the safety of the building they live in and to ensure the Accountable Person is able to discharge their duty to effectively manage the risk of fire or structural failure. Those duties are:

- Not to act in a way that creates a significant risk of a building safety risk materialising;
- Not to interfere with a relevant safety item; and
- To comply with a request, made by the appropriate Accountable Person for information reasonably required for the purposes of their duty to assess and manage building safety risks.

820 The Accountable Person may need access to one or more spaces in the higher-risk building that are controlled or occupied by a resident or by an owner of a residential unit. This access may be required so that the Accountable Person can confirm whether a resident has breached a specified duty, or in order to perform their own duties to assess and manage building safety risks and take reasonable steps to minimise them.

Example

An Accountable Person is informed by one of their residents that they will be carrying out a renovation of their flat. The flat has a supporting column within its footprint. The Accountable Person in this situation may want to inspect the work in order to ensure that the column has not been compromised and could therefore request access. If the resident refused to grant access, the Accountable Person could apply for access to assess whether this work poses a building safety risk.

Enforcement

Section 98: Duty on regulator to enforce Part

Effect

821 This section is self-explanatory.

Section 99: Compliance notices

Effect

822 This section enables the Building Safety Regulator to issue a compliance notice to an Accountable Person where they are contravening, or appear likely to contravene, a "relevant requirement" under this Part of the Act or a requirement set out in regulations made under it. Regulations may set out requirements that are excluded from enforcement action under this section. 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.

823 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 section 103(3)).

824 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 paragraph 24(2) of Schedule 22 of the Sentencing Act 2020). If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years' imprisonment. Under section 161, certain corporate officers could also be liable for prosecution.

825 These notices will be appealable to the First-tier Tribunal (see section 103 for further detail).

Background

826 This section 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.

827 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
> The Building Safety Regulator becomes aware that an Accountable Person has not been maintaining the information as required by section 88 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.

Section 100: Compliance notices: supplementary

Effect

828 This section 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.

829 This section 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.

Section 101: Offence: contravention giving rise to risk of death and serious injury

Effect

830 This section creates an offence of breaching a "relevant requirement" under the new regime set out in this Part of the Act, 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 section 62.

831 The offence is triable either way, with a maximum penalty of an unlimited fine and/or 12 months' imprisonment (six months until the commencement of paragraph 24(2) of Schedule 22 of the Sentencing Act 2020). If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years' imprisonment. 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

832 Where a requirement under the new regime is breached, the Building Safety Regulator would normally be expected to use a compliance notice as described in the previous sections to secure compliance from the Accountable Person – 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 section, if it considers that to be the most effective and appropriate course of action.

Example

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 section 99), 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.

Special measures

Section 102: Special measures

Effect

833 This section provides for the special measures regime as detailed in Schedule 7.

Background

834 This is a new provision.

835 Schedule 7 details the procedure that the Building Safety Regulator must follow before applying for a special measures order; the appointment of a special measure manager by the First-Tier tribunal and further provisions in relation the operation of the special measures regime.

Appeals etc

Section 103: Appeals against compliance notice etc

Effect

836 This section sets out that a person receiving a compliance notice (as described in section 99 above) may appeal against that notice to the First-tier Tribunal, and that an appeal of a compliance notice that is not an urgent action notice (see section 99(4)) will suspend the effect of the notice pending the resolution of the appeal (subsection (3)). As set out in the note above in respect of section 99, given the greater seriousness of the issues justifying the issue of an urgent action notice, this section sets out that an appeal against such a notice will not suspend its effect (subsection (4)(b)) unless the First-tier Tribunal determines that it should (subsection (4)(a)).

837 Subsection (2) sets out the grounds on which an appeal can be made, while subsection (5) provides that the recipient of a compliance notice can apply to the Tribunal for an extension of any time limit set by the regulator in the notice, whether or not an appeal is lodged.

Section 104: Appeals against decisions of the regulator made under this Part

Effect

838 This section relates to Part 4 only and sets out that affected persons (defined in subsection (4)) have the right to appeal certain decisions made by the Regulator.

839 These decisions are:

- where the regulator declines to register a higher-risk building or removes one from the register;
- where an application for certification is refused; and
- where the regulator gives a direction to the Accountable Person.

840 This section also sets out on what grounds an appeal may be made.

Background

841 This section provides a right of appeal for certain decisions the Regulator will make for higher-risk buildings under this legislation.

Example

The Building Safety Regulator has declined to issue a Building Assessment Certificate for a higher-risk building due to non-compliance with prescribed criteria. This is appealed by the Accountable Person to the First-tier Tribunal on one of the grounds specified in this section. The Tribunal, under this section, can either confirm, vary or quash the Regulator's decision.

Section 105: Appeals against decisions of the regulator made under regulations

Effect

842 This section relates to Part 4 only and creates a provision to give a right of appeal to prescribed persons regarding decisions made by the Regulator that are set out in secondary legislation.

Background

843 This section is intended to be used to provide a comprehensive right of appeal for the decisions the Regulator will make for higher-risk buildings under this legislation that are created in regulations.

Example

The Building Safety Regulator may wish to create new duties or requirements in regulations as the regime settles in. New duties and components will require a route of appeal. This section provides a degree of flexibility in introducing of the building safety regime where it sees fit through the making of regulations under this Part of the Act.

Section 106: Appeals: supplementary

Effect

844 This section is supplementary to:

- Section 103: Appeals against compliance notice etc;
- Section 104: Appeals against decisions of the regulator made under this Part; and
- Section 105: Appeals against decisions of the regulator made under regulations

845 It sets out what the tribunal can do on determining an appeal, how the tribunal must consider an appeal, and that new evidence and information can be presented.

846 This section 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.

Background

847 This section supplements the overall package of appeal provisions for decisions made by the Regulator under this legislation.

> ### Example
> The Building Safety Regulator has decided to remove a building from the register because it appears to the regulator that the building is not occupied. The Accountable Person for the building appeals against that decision. During the period of the appeal, regulations may specify that the building remains on the register until the appeal decision is reached.

Section 107: Enforcement of decisions of the First-tier and Upper Tribunal

Effect

848 This section ensures that tribunal decisions are enforceable. In practice, it means that any decision of the First-tier or Upper Tribunal under or in connection with Part 4 of the Act, other than a decision ordering the payment of a sum, will be enforceable with the permission of the county court in the same way as orders of the county court.

Background

849 The general position is that the tribunal does not have enforcement powers of its own, other than powers to enforce payment for a sum of money. As such, where it is necessary to have powers to enforce tribunal decisions, it is usual to insert a provision in legislation to enable the county court to enforce those decisions.

> ### Example
> The Regulator issues a direction to an Accountable Person to carry out an assessment of building safety risks under section 83. In the event of an appeal by the Accountable Person, the tribunal's decision on the appeal can be enforced with the permission of the county court in the same way as orders of the county court.

Miscellaneous and general

Section 108: Guidance

Effect

850 This section 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.

851 Subsection (1) sets out the areas where the Building Safety Regulator may issue guidance; they are:

- mandatory reporting requirements for Accountable Persons;
- duties to keep or give information to residents and others; and
- how an Accountable Person should operate a complaints procedure for residents.

852 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 1 of the Building Act 1984, compliance with the guidance can be relied on in court or 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.

Background

853 Historically, there has always been detailed guidance (the Approved Documents) to give further detail in respect of the functional requirements set out in Building Regulations. This section sets out those areas of this Act where similar guidance, with statutory force, is needed to give guidance to those with duties under the new occupation regime.

Example 1

In order to assist Accountable Persons with setting up and operating a complaints procedure for the residents of higher-risk buildings, 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 they stick 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 tribunal proceedings on compliance with the guidance as tending to establish compliance with the legal requirements.

Section 109: Cooperation and coordination

Effect

854 Subsection (1) and (2) set out that where there is more than one Accountable Person for an occupied higher-risk building that they must, when carrying out their duties, cooperate and coordinate with all other Accountable Persons for that building as far as possible.

855 This section 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. The Accountable Person must therefore cooperate with each Responsible Person so that they can carry out their duties under the Regulatory Reform (Fire Safety) Order 2005.

856 Responsible Person(s) are defined under Article 3 of the Regulatory Reform (Fire Safety) Order 2005.

Background

857 This is a new provision.

> ### Example
> 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 in the Independent Review, this section requires Accountable Persons and Responsible Persons under the Fire Safety Order to work together to share relevant fire safety information.
>
> The duty on Accountable Persons to cooperate with each other is crucial to the success of the regime in, for instance, running a single Residents' Engagement Strategy for the whole building and enabling the golden thread to operate effectively.
>
> 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.

Section 110: Managers appointed under Part 2 of the Landlord and Tenant Act 1987

Effect

858 This section makes amendments to section 24 of the Landlord and Tenant Act to ensure that building safety is kept discrete from other management functions and that any failings on the part of an Accountable Person are dealt with via the Building Safety Regulator. Accordingly, this section provides that a tribunal cannot appoint a manager under section 24 where the breach of obligations complained of by tenants is a breach of the Accountable Person's building safety obligations. It further provides that when appointing a manager under section 24 the tribunal cannot confer upon that manager any building safety functions which are due to be carried out by an Accountable Person.

Background

859 Section 24 of the Landlord and Tenant Act 1987 allows tenants to apply to the tribunal for appointment of a "manager" of their choosing to take over management functions where a landlord has failed to comply with its obligations. If that principle were to be carried through into building safety, it could compromise the authority of the Building Safety Regulator. The amendments to section 24 ensure that the new regime is compatible with existing legislation and provides clarity as to avenues of redress for breach of obligations. Under the Act, redress should be sought through the residents' complaints mechanism to the Building Safety Regulator who can arrange for the appointment of a Special Measures Manager if there have been persistent breaches of building safety obligations by the Accountable Person.

> **Example**
> If the residents of a building are unhappy with their Accountable Person, they will be unable to circumvent the regulator by going to the Tribunal to obtain the appointment of their own manager, whose responsibilities would then overlap with those of the Accountable Person. . In the event that there are breaches of the implied building safety terms, it will be for the Building Safety Regulator to take enforcement action and/or make arrangements for the appointment of a Special Measures Manager, as it deems appropriate.

Section 111: Building safety directors of resident management companies

Effect

860 This section enables resident management companies that are Accountable Persons under Part 4 of the building safety regime to appoint a building safety director for the purpose of supporting them in meeting their Part 4 building safety duties if they wish to do so. This section has retrospective effect as it amends existing articles of association.

861 Subsection (2) provides that the articles of association of a resident management company which is an Accountable Person have effect as if they allowed:

- the appointment of a director of the company, for a building safety purpose;
- the fact that any such director can be paid; and
- the removal of any such director.

862 The details of all of these will be set out in regulations.

863 Subsection (3) sets out that the changes to the articles of association mentioned above will affect all new and existing resident management companies notwithstanding anything in the company's articles of association.

864 Subsection (4) defines "building safety purpose" as the purpose of supporting the resident management company in complying with its duties under this Part or under regulations made under this Part. It also sets out that a resident management company will be defined in regulations made by the Secretary of State.

865 This section is linked to section 112, which inserts section 30E into the Landlord and Tenant Act 1987 to enable this section to function by implying terms into relevant leases so that costs incurred by a residents' management company in remunerating a director appointed under this section can be recoverable as a service charge under the lease.

866 This section is also linked to section 161(4) that sets out that where a "relevant company" (which includes a resident management company) appoints a paid director for a building safety purpose, all unpaid directors of the company will be relieved of their personal criminal liability for breaches of Part 4 duties.

Background

867 This is a new provision.

868 The Independent Review identified that there should be a clearly defined dutyholders during occupation who can be held to account and will have statutory obligations for ensuring that fire and structural safety is being effectively managed. The Independent Review was also clear that accountability must always remain with the dutyholders.

869 This section ensures that responsibility for building safety duties will remain with the resident management company Accountable Person and that they are empowered to continue managing their buildings while also giving them the option to appoint a professional building safety director to support them in managing their Part 4 duties where necessary.

Landlord and tenant etc

Section 112: Implied terms in leases and recovery of safety related costs

Effect

870 This section refers to the implied building safety terms in relevant leases.

871 All written leases set out obligations on the part of the landlord, and on the part of the tenant. These are usually in the form of "covenants"; the landlord covenants with (promises) the tenant to do "*X*" and the tenant covenants with the landlord to do "*Y*".

872 The Landlord and Tenant Act 1985 has implied covenants into short leases in relation to repair and human habitation. As a result, even if an agreement is signed to the contrary or if there is no written agreement, the landlord is always under an obligation to keep in repair the structure and exterior of the property and the installations for essential services in the property, and to keep the property fit for human habitation. At the same time, there is an implied covenant on the part of the tenant to grant access for repairs.

873 This section amends the 1985 Act to provide new implied covenants in relation to building safety. These apply to all leases of dwellings in higher-risk buildings in England.

874 The landlord covenants with the tenant to comply with their building safety duties if they are an Accountable Person, to co-operate with any Accountable Person and to comply with any relevant terms of a special measures order. The tenant covenants with the landlord to allow access for building safety purposes, to comply with the residents' building safety duties and to comply with any relevant terms of any special measures order.

875 This section makes additional provision for "relevant leases" – those which are for a fixed term of 7 years or over under the terms of which tenants have committed to pay a service charge which varies in accordance with the landlord's expenditure on the upkeep of the building. The additional provision will enable the landlord to pass on the running/management costs of the new regime to the tenant through the service charge.

Details of the Section

876 This section amends the Landlord and Tenant Act (1985) in accordance with the changes set out below.

30C implied terms relating to building safety

877 This section sets out implied terms (covenants) for the landlord and tenant. In the lease there is implied a covenant by the landlord:

- where the landlord is an Accountable Person for the higher-risk building, to comply with their building safety duties;
- to cooperate with any person in connection with a relevant person (an Accountable Person or Special Measures Manager) complying with their building safety duties; and
- where an special measures order made under Schedule 7 as introduced by section 102 of this Act for the higher-risk building is in force, to comply with that order so far as it relates to the landlord.

878 In the lease there is implied a covenant by the tenant:

- to allow the landlord, an Accountable Person or a Special Measures Manager or a person authorised by one of those persons to enter the premises for a relevant building safety purpose;
- where the tenant is a resident of the higher-risk building, to comply with their duties under sections 95 and 97 of this Act; and
- where an special measures order made under Schedule 7 as introduced by section 102 of the this Act , to comply with that order so far as it relates to the tenant.

879 Subsections (4), (5) and(9) give definitions for what is meant by terms including "cooperate", "a relevant building safety purpose", "building safety duty", "relevant person" and "resident".

880 Subsection (6) confirms that entry is required only at reasonable times and if the tenant has been given at least 48 hours notice.

881 Subsection (7) states that the disclosure of information should not breach any obligation of confidence owed by the landlord in relation to that information and any other restriction on the disclose of information.

882 Sub section (8) confirms that the disclosure of information is not required if it would contravene data protection legislation.

30D Liability for building safety costs

883 This section applies to relevant leases of premises which consist of or include a dwelling in a higher-risk building. It provides that for those leases, the cost of taking building safety measures will always be recoverable under the service charge.

884 In this section, relevant lease means a lease:

- that is granted for a term certain 7 years or more, whether or not it is (or may become) terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture; and
- under which the tenant is liable to pay a variable service charge.

885 Subsection 4 sets out a list of activities deemed building safety measures for the purpose of this section.

886 Subsection (5) sets out that legal and other professional fees, fees payable to the regulator and management costs can be incurred and charged as part of building safety measures to the extent that they are incurred in connection with taking those measures.

30E Liability for remuneration of building safety director of resident management company etc

887 Section 30E implies terms into relevant leases with the effect that costs incurred by residents' management companies or right to manage companies in remunerating a director appointed for the purpose of supporting them with their Part 4 duties can be recoverable as a service charge. It also ensures that there is no barrier in leases to such an appointment taking place.

30F Restrictions on contracting out of section 30C to 30E

888 This provides that a covenant in a lease, or other agreement, intending to contract out, or restrict, certain provisions in section 30C, 30D or 30E has no effect.

30G Jurisdiction of county court

889 This provides that the county court is the court for determining any question or issue under sections 30C to 30E.

30H Specific performance of implied terms

890 This provides that the court may order a party to a lease to comply with the obligations (implied covenants in the lease) under section 30C(2) or (3). The order can apply in relation to parts of the building not let to the leaseholder and notwithstanding any rule that would otherwise restrict the remedy.

20F Limitation of service charges: excluded costs for higher-risk buildings

891 New section 20F lists certain costs incurred in connection with Part 4 of this Act that cannot be taken into account in determining the amount of service charge payable by a tenant under the lease.

Background

892 This is a new section to align the Landlord and Tenant Act 1985 with Part 4 of the Building Safety Act. It ensures that there are dedicated provisions in relevant leases of dwellings in higher-risk buildings dealing with the putting in place and operation of building safety measures, the recovery of associated costs, where appropriate, and the securing of access to all dwellings for building safety purposes.

Section 113: Provision of building safety information

Effect

893 This section inserts into the Landlord and Tenant Act 1987 two new sections applying to dwellings in higher-risk buildings. Section 47A requires certain building safety information to be included in certain demands, for example, for rent or service charges. Section 49A places a duty on landlords to give tenants notice of that building safety information.

894 When serving a written demand for rent, service charges or an administrative charge, the demand must include the relevant building safety (see below).

895 If the information is not provided then any service charge or administration charge demanded will not be treated as due until such time as the information is supplied. This section only postpones the requirement to make payment and those sums become payable once the information is provided. This rule does not apply where there is a court- or tribunal-appointed receiver or manager in place, whose functions include the receiving of service charges or administration charges or a special measures order is in place for the building.

896 Under section 49A the landlord must give written notification of the relevant building safety information. The requirement may be fulfilled by giving such notice to a prospective tenant before the tenancy commences.

897 Where a landlord fails to give such notice to a tenant, this section states that any rent, service charge or administration charge due from the tenant to the landlord is not due before the landlord gives the notice to the tenant. This section only postpones the requirement to make payment and those sums (including any arrears accrued) become payable once the information is provided. This rule does not apply where there is a court or

tribunal-appointed receiver or manager in place whose functions include the receiving of rent, service charges or administration charges or a special measures order is in place for the building.

898 The requirement applies to landlords of dwellings in higher-risk buildings (other than those to which Part II Landlord and Tenant Act 1954 (business tenancies) apply) and applies regardless of the length of the lease or tenancy.

899 The relevant building safety information in both sections 47A and 49A is (a) a statement the premises consist of or include a dwelling in a higher-risk building and (b), the name and contact details of the principal accountable person, any special measures manager and the regulator.

900 The provisions will apply to all existing leases (including tenancies) in affected buildings when they come into force.

Background

901 This section amends the Landlord and Tenant Act 1987 to ensure tenants of higher-risk buildings, including those who may be subletting from a long leaseholder, are adequately informed by the landlord about those persons that are responsible for building safety in their building and are able to contact them.

Section 114: Commonholds

Effect

902 This section amends the Commonhold and Leasehold Reform Act 2002, ensuring building safety is adequately considered.

903 In the case of land held on a commonhold basis, the commonhold association will be the Accountable Person. This section makes amendments making it mandatory for a commonhold community statement for a higher-risk commonhold in England to make provisions requiring the commonhold association to comply with its duties under Part 4 of this Act in relation to each commonhold unit and in relation to the common parts.

904 It also ensures that the commonhold community statement for a higher-risk commonhold must make provision requiring the directors of the commonhold association to make an annual estimate of the income required to be raised from unit-holders to meet the building safety expenses of the association, and requiring each unit-holder to make payments in respect of the percentage of any estimate which is allocated to their unit in relation to building safety expenses.

905 Subsection (8) part (3) provides that "building safety expenses of the association" includes expenses incurred by the commonhold association or special measures managers in relation to measures required or permitted to be undertaken by Part 4 of this Act or regulations under this Act.

906 Subsection (9) includes interpretations of terms made in amendments to the Commonhold and Leasehold Reform Act 2002 and ensures they align with the Building Safety Act.

Background

907 This is a new section to align the Commonhold and Leasehold Reform Act 2002 with the Building Safety Act ensuring building safety and the costs associated adequately extend to higher-risk commonholds.

Interpretation

Section 115: Interpretation of Part 4

Effect

908 This section provides definitions of key terms used in Part 4 of the Act. It also clarifies that the requirements in Part 4 do not apply to the Palace of Westminster.

Part 5: Other provisions about safety standards, etc.

Remediation of Certain defects

Section 116 – Remediation of certain defects

Effect

909 Section 116 provides an overview of sections 117 to 125, and Schedule 8, which make provision about the remediation of certain defects in relevant buildings.

910 The section does not have any legal effect, rather it guides the reader through the relevant provisions.

Background

911 Sections 116 to 125 and Schedule 8 make provision about the remediation of certain defects in certain buildings. They are collectively referred to as the "leaseholder protections", as they protect leaseholders in multi-occupied residential buildings from certain costs associated with remediating historical building safety defects.

912 Most multi-occupied residential buildings in England, such as blocks of flats, are owned by a freeholder, with the individual flats owned on long leases. A leasehold property is owned by the leaseholder for the length of the lease agreement with the freeholder, after which point the ownership of the property returns to the freeholder. The freeholder typically owns the land on which the building is built, as well as the structure and common parts of the building (such as the staircases and hallways). Leases of over 21 years are generally known as long leases and it is not uncommon for 999-year leases to be granted. Leaseholders have certain rights to extend the length of their lease if they wish to do so.

913 The ownership structures of multi-occupied residential buildings can be complex with multiple additional landlords who own the building or parts of it, separate to the freeholder of the land on which the building sits. In the most straightforward cases, there will be a

freeholder who owns the land and the building itself, and leaseholders who own the long leases of dwellings contained within the building; this explanatory note uses that straightforward case for illustrative purposes.

914 It is the freeholder's responsibility to ensure the safety of the building and the upkeep of the structure and common parts, and the costs associated with these responsibilities can normally be charged to leaseholders through the service charge, as per the terms of the lease. The service charge will commonly cover the costs associated with routine maintenance and repairs.

915 Since the Grenfell Tower fire in 2017, it has become apparent that a number of residential blocks of flats have serious historical fire safety defects, often, but not always, associated with their original construction. Most notably this has included the use of unsafe cladding on the external walls of these buildings. Due to the risk to life posed by these defects, extensive and often costly remediation work to make buildings safe can be needed.

916 The terms of most leases, which are contractual agreements between the leaseholder and freeholder, will allow the costs associated with this remediation work to be passed on to individual leaseholders through the service charge. The costs per lease to remediate historical building safety defects have sometimes been very high and frequently run into the tens or hundreds of thousands of pounds. These costs have put strain on leaseholders who are often unable to meet these costs.

917 The Government has brought forward a series of interventions to protect leaseholders from the costs associated with remediating historical building safety defects, including direct grant funding for the costs of remediating unsafe cladding on certain buildings, and agreeing with developers that they will fix buildings they have had a role in developing or refurbishing. This Act also contains a number of provisions to allow those directly responsible for creating building safety defects to be held accountable through the Courts.

918 The leaseholder protections measures further protect certain leaseholders in law by preventing altogether, or otherwise limiting, the costs that can be passed through the service charge to the leaseholder in respect of certain historical building safety defects.

Section 117 – Meaning of "relevant building"

Effect

919 This section defines a "relevant building" for the purposes of section 119 to 125 and Schedule 8; it defines the types of building to which the leaseholder protections apply.

920 A "relevant building" is defined as a self-contained building or part of a building containing at least two dwellings which is at least 11 metres in height, or which has at least five storeys.

921 Subsection (3) sets out that leaseholder-owned buildings are not included in the definition of "relevant building". Those types of buildings that are not included in the definition are those in which the building has undergone collective enfranchisement, or which are on commonhold land.

922 Subsections (3)(a) and (3)(b) capture the statutory routes by which a building can undergo collective enfranchisement. These are under Parts 1 or 3 of the Landlord and Tenant Act 1987, and under Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993. Subsection (3)(c) provides a power for the Secretary of State to specify, by regulations, other routes by which a building can become leaseholder owned, and which will also not be included in the definition of "relevant building". Subsection (3)(d) captures buildings which are on commonhold land, which has the same meaning as in the Commonhold and Leasehold Reform Act 2002.

923 Subsections (4), (5), and (6) set out the meaning of "self-contained". A building is self-contained if one part of it could be redeveloped independently of the rest of the building.

Background

924 The problems associated with historical building safety defects in multi-occupied residential buildings are concentrated in medium- and high-rise buildings. There is a greater risk to life in taller buildings when fire does spread, and so defects in taller buildings are more likely to need to be remediated, and it is leaseholders in those buildings that have found themselves more likely to face significant remediation costs. Section 117 defines a relevant building (one that is within scope of the protections) as a building containing at least two or more dwellings and which is at least 11 metres in height or has at least five storeys.

925 Buildings which are below 11 metres in height, and which have fewer than five storeys are not within the scope of the leaseholder protections as evidence shows that there is no systemic issue with historical fire safety defects in these buildings. Costly remediation is unlikely to be needed, and there are likely to be more proportionate mitigations, such as the installation of fire alarms. It is not, therefore, necessary for low-rise buildings to be included within the definition of relevant building.

926 The ownership structures of multi-occupied residential buildings are discussed in the explanatory note for section 116 and set out that (in simple terms) in most cases the building and the land on which it sits is owned by the freeholder, and the long leases of the individual dwellings are owned by the leaseholders. The freeholder (that is, the owner of the freehold) can be, for example, a private company, an individual, a local authority, or a charity.

927 It is also possible for some or all of the leaseholders to purchase their building's freehold; this is known as collective enfranchisement. Where enfranchisement occurs, the leaseholders become the owner of the freehold. There are several statutory routes to collective enfranchisement. The statutory routes are under Parts 1 or 3 of the Landlord and Tenant Act 1987, and under Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993. It is also possible for leaseholders to purchase the freehold of their building through non-statutory means.

928 An alternative to the leasehold model of ownership of multi-occupied residential buildings is commonhold. When a building is on commonhold land, each unit-holder (owner of a dwelling) within the building also owns the freehold of the unit. Commonhold is a different model of ownership to leasehold, but commonhold buildings are similar to those which

have collectively enfranchised in the sense that the building, and the land which the building is on, are collectively owned by the owners of the dwellings contained within the building in both circumstances. The legal framework which governs commonhold is the Commonhold and Leasehold Reform Act 2002. There are far fewer commonhold buildings in England than multi-occupied leasehold buildings.

929 The leaseholder protections measures work at a fundamental level by limiting or preventing the costs that can be passed through the service charge to leaseholders by the freeholder. When costs cannot be passed on through the service charge, the freeholder, who is responsible for undertaking works to maintain the building, becomes liable for these costs. In situations where the building is collectively owned by the leaseholders, there is no separate entity to bear the costs – the leaseholders are the freeholder. Consequently, the definition of "relevant building" does not include leaseholder-owned buildings.

Proposed use of power

930 The power at subsection (6)(c) will be used to make regulations setting out other circumstances (other than those set out in subsections (6)(a) and (6)(b)) where a building can be leaseholder-owned.

> ### Example
> A block of flats is 15 metres high and contains 50 flats. It is not collectively owned by the leaseholders. The block falls within the definition of "relevant building" and is in scope of the leaseholder protections.
>
> A block of flats is 18 metres tall. It contains primarily office space and shops but contains three flats near the top. It is not collective owned by the leaseholders. The block falls within the definition of "relevant building" and is in scope of the leaseholder protections

Section 118 – Section 117: height of buildings and number of storeys

Effect

931 This section applies for the purposes of section 117. Section 117 sets out that a building is defined as a "relevant building" if it contains at least two dwellings and is at least 11 metres in height or has at least five storeys. Section 118 details how the height of the building and its number of storeys is to be determined.

932 Subsection (2) sets out how the height of a building is to be determined. The height is measured from ground level to the floor of the top storey.

933 Subsection (3) sets out how the number of storeys is to be determined. Any storey below ground level (such as a basement) is to be disregarded. A mezzanine floor counts as a storey if the floor area is at least half the floor area of the largest storey in the building.

934 Subsections (4) and (5) make further provision as to how "ground level" is to be determined and what is to count as a storey "below ground level" for the purposes of this section.

Background

935 This section sets out the definition of a "relevant building" in terms of the building's height and the number of storeys it has. This section sets out important detail that will allow these factors to be determined.

936 A higher-risk building, as defined in section 31 (for the purposes of Part 3) and section 65 (for the purposes of Part 4), is one that is at least 18 metres in height or has at least seven storeys. For the purposes of Parts 3 and 4 of the Act, the details of how height and number of storeys are to be determined as set out in regulations made under sections 31 and 65. The concept of a higher-risk building does not apply for the purposes of the leaseholder protections, but the method by which a building's height and number of storeys are to be determined is the same as set out in the draft Higher-Risk Building (Descriptions and Supplementary Provisions) Regulations which were published alongside the Building Safety Bill.

> Example
> A building is 10.5 metres tall and has five storeys all of which are above ground level. Although the building is under 11 metres tall, because it has five storeys it falls within the definition of a "relevant building" provided the other criteria within section 117 are met

Section 119 – Meaning of "qualifying lease" and the "qualifying time"

Effect

937 This section sets out the meaning of "qualifying lease" and "the qualifying time" which apply for the purposes of sections 122 to 125 and Schedule 8.

938 The "qualifying time" is defined in subsection (2) as the beginning of 14 February 2022.

939 A "qualifying lease", defined in subsection (2), is a lease to which the leaseholder protections measures apply. For a lease to be qualifying, it must be a long lease of a single dwelling within a relevant building (see section 117 for the definition of "relevant building"). A "long lease" is defined in subsection (4)(a) as one which exceeds 21 years in length. The tenant under the lease must also be liable to pay a service charge, where "service charge" has the meaning given under section 18 of the Landlord and Tenant Act 1985. The lease must also have been granted before the qualifying time.

940 Subsection (2)(d) sets out the categories of leases that are qualifying. For a lease to be qualifying, at the qualifying time the lease must have been the tenant's only or principal home, or it must have been the only property they owned in the United Kingdom (even if it was not their only or principal home), or the relevant tenant must have owned no more than two additional properties in the United Kingdom in total. A "relevant tenant" is defined in subsection (4)(c) as a person who is a tenant under the lease (in other words, a leaseholder) at the qualifying time.

941 The provision at subsection (2)(d) means that a leaseholder will qualify for the leaseholder protections for their properties if they own up to three properties in the United Kingdom in total. If more than three properties in total are owned, then the principal home qualifies for the protections, but the other properties do not.

942 Subsection (4)(b) sets out that a person "owns" a dwelling in England, Wales, or Northern Ireland if they have either a freehold or leasehold interest in it (capturing the two types of property ownership in those jurisdictions). The word "owns" suffices for property in Scotland because Scotland does not have a system of leasehold; ownership in Scotland is a generally understood term which does not need a separate definition. This means that all types of residential property ownership count against the total of three properties in the United Kingdom for the purposes of the leaseholder protections.

943 Subsection (3) makes provision for the situation where a dwelling was let under two or more leases at the qualifying time. It sets out that any lease which is superior to any other lease is not a qualifying lease. This ensures that it is always the lease at the end of any chain of demised leases that qualifies for the protections, rather than any superior landlord (see the explanatory note to paragraph 12 of Schedule 8 for more detail about superior landlords and demised leases).

944 This section makes clear the terms on which a lease becomes a qualifying lease. It is not a leaseholder that becomes a qualifying leaseholder – it is the leasehold interest itself that is qualifying. Because whether a lease is qualifying is determined as regards the position as at the qualifying time, the status of the lease (as qualifying or otherwise) became fixed on 14 February 2022. That status will then transfer automatically to future buyers of the lease should it be sold. This means that if a lease is qualifying, it will be automatically qualifying for any future buyer of that lease. Similarly, if a lease is non-qualifying, it will also be non-qualifying for any future buyer.

Background

945 The leaseholder protections apply to leasehold dwellings in multi-occupied buildings in England that are at least 11 metres tall or have at least five storeys. Further detail on the leasehold model of ownership in England is set out in the explanatory note to section 116. Subsections (2)(a) and (2)(b) of this section set the parameters for what is to be determined as a leasehold dwelling for the purposes of the leaseholder protections. It applies to a lease which is at least 21 years in length; this type of lease is generally known as a "long lease".

946 The leaseholder protections do not apply to all leasehold dwellings. They are designed to protect leaseholders living in their own homes as well as those who may have moved out and are subletting due to building safety issues in their property or for other reasons. In addition, the protections apply to people owning small numbers of additional properties, with people owning up to three residential properties in total in the United Kingdom qualifying. For people who own more than three properties in total, their principal home always qualifies for the protections if it is otherwise in scope.

947 The section also defines the "qualifying time" as the beginning of 14 February 2022; the qualifying time is relevant elsewhere in the leaseholder protections and applies to a number of different tests which are applied under the provisions. Liability under the leaseholder protections became fixed and immutable at the qualifying time. This is important to give certainty to all parties who will be affected by the leaseholder protections provisions and to the housing market, which is important to ensure, for example, that lending on properties can take place with confidence.

948 The "qualifying time" is defined as the beginning of 14 February 2022, as that was the date on which the leaseholder protections provisions were first tabled as amendments to the Building Safety Bill at Committee stage during the Bill's passage through the House of Lords, and as such the point at which the provisions first become public knowledge. Although the leaseholder protections only take legal effect at commencement, two months after Royal Assent, the choice of qualifying time means that the provisions could not be manipulated or preemptively avoided in the period between the original publication of the amendments and the provisions becoming law.

Example 1

A person owns three flats in England, all of which are contained within relevant buildings. They do not own any other property in the United Kingdom. All three flats are qualifying leases and qualify for the leaseholder protections.

Example 2

A person owns two flats in England which are contained within relevant buildings, and a house in Scotland. As three properties in the United Kingdom are owned in total, the two flats fall within the definition of qualifying lease and qualify for the leaseholder protections.

Example 3

A person owns four flats in England which are contained within relevant buildings, one of which they live in (and lived in on 14 February 2022). The flat the person lives in qualifies for the leaseholder protections as it was their principal home at the qualifying time. The other three flats do not qualify, as the person owned more than three properties in the United Kingdom in total.

Example 4

A person owns two flats in England and two houses in Wales. They live in one of the houses. As the person owns more than three properties in the United Kingdom in total, neither of which was their principal home at the qualifying time, the flats do not qualify for the leaseholder protections.

Example 5

A person owns a flat which has a qualifying lease. The lease is qualifying because the flat was their principal home on 14 February 2022. They sell the flat on. The leaseholder protections automatically transfer to the future buyer of the flat. The protections transfer irrespective of the identity of the buyer, because the status of the lease as qualifying was determined with respect to the position on 14 February 2022.

Example 6

A person owns a flat which has a non-qualifying lease because on 14 February 2022 they owned nine flats in total in England. They sell it on to a buyer who intends to live in the flat. Even though the flat will be the buyer's principal home, the lease remains non-qualifying because on 14 February 2022 it was not a qualifying lease

Section 120 – Meaning of "relevant defect"

Effect

949 This section defines "relevant defect" for the purposes of sections 122 to 125 and Schedule 8. Schedule 8 provides that the costs associated with remediation of historical building safety defects cannot be passed to qualifying leaseholders through the service charge. This section defines the types of defects to which the Schedule, and other relevant sections, apply.

950 In subsection (2) a "relevant defect", in relation to a building, is defined as anything done (or not done), or anything used (or not used) in connection with relevant works that also causes a building safety risk. The reference to anything done (or not done) in this subsection would capture a defect arising due to, for example, shoddy building work. Subsection (4) sets out that the reference to anything done (or not done) includes the provision of professional services, for example those of an architect. The reference to used (or not used) would capture, for example, the use of inappropriate or defective construction products in the building.

951 For a defect to be a "relevant defect" it must cause a building safety risk. A "building safety risk" is defined in subsection (5) as a risk to the safety of people in or about a building arising from the spread of fire or the collapse of the building or any part of it.

952 Subsection (3) defines "relevant works" and "the relevant period" which apply for the purposes of the definition of "relevant defect". "The relevant period" is defined as the 30-year period prior to commencement of this section, which is two months after Royal Assent of this Act.

953 Relevant works are those that have resulted in the creation of a relevant defect and are defined as works relating to the initial construction of the building, or its conversion into a residential building; or those undertaken or commissioned by or on behalf of the building's landlord or management company (which are defined in subsection (5)), where the works were completed in the relevant period.

954 In addition to works completed in the 30 years prior to commencement, works which were done after commencement for the purpose of remedying a relevant defect are also relevant works. This means that where work has been done after commencement to fix a defect, if that work is faulty and further work is subsequently needed, then that work is also defined as relevant works.

Background

955 As described in the explanatory note to section 116, since the Grenfell Tower fire in 2017, it has become apparent that many blocks of flats have serious historical building safety defects which require often costly remediation. Most flats in multi-occupied residential buildings in England are owned as leaseholds, meaning that the building and the land which it is on are owned by a freeholder, and the long leases of the dwellings within the building are owned by the leaseholders. The freeholder is responsible for the safety and upkeep of the building. The terms of most leases, which are contractual agreements between the freeholder and leaseholder, allow the costs associated with maintaining the building to be passed through the service charge by the freeholder to leaseholders.

956 The leaseholder protections provisions protect leaseholders by preventing or otherwise limiting the costs associated with historical building safety defects being passed through the service charge. Section 120 defines the defects which fall within the scope of the leaseholder protections.

957 The leaseholder protections deal only with historical building safety defects; they are backward-looking only. They are a one-off intervention designed to deal with the current serious problems with historical building safety defects in medium- and high-rise buildings. The protections afforded only apply to defects created in the 30-year period prior to commencement of the provision, so in practice between mid-1992 and mid-2022. A 30-year period has been chosen as evidence shows that this period captures all buildings affected by the relevant safety issues. It aligns with changes this Act makes to the limitation period under section 1 of the Defective Premises Act 1972 (to which see section 135) and the relevant limitation period under the new cause of action relating to cladding products (sections 150 and 151). The Government has also agreed with major residential property developers that they will remediate buildings they had a role in developing or refurbishing in the past 30 years.

958 Subsections (2) and (5) define what is meant by a "relevant defect" and set out that for a defect to be a relevant defect, it must give rise to a building safety risk. A "building safety risk" is one that puts people's safety at risk due to either the risk of the spread of fire or structural collapse of a building.

959 The definition of building safety risk mirrors the definition in section 62. The Independent Review focused on fire and structural safety risks and recommended that these were the initial scope for building safety risks in the new regime, as the spread of fire and structural failure represent the most serious risks to safety in and about buildings. This definition of building safety risk is mirrored for the purposes of the leaseholder protections, as fire and structural safety risks represent the most serious risks to safety in and about buildings and are therefore the risks that are most likely to need to be mitigated, often through costly remediation – the costs associated with which leaseholders need protection from.

960 Section 62 includes a power to prescribe other matters within the definition of a building safety risk. Although it is not proposed to expand that definition at this time, that power gives important flexibility for the future regime in Parts 3 and 4 of this Act should new building safety risks materialise. The leaseholder protections are backward-looking only, in the sense that they only apply to historical building safety defects. They are a one-off intervention designed to deal with current issues associated with historical defects in certain buildings and so it is not necessary to mirror a power to expand the definition of building safety risk in this section.

Example 1

A fire safety risk in a high-rise building was created due to the installation of flammable cladding in 2005. The cladding gives rise to a fire safety risk, as it could put people's safety at risk by accelerating the spread of fire. The cladding would fall within the definition of a relevant defect, as the defect was created within the past 30 years and gives rise to a building safety risk. The leaseholder protections would therefore apply to the costs associated with mitigating against the risk posed.

Example 2

A contractor built a medium-rise block of flats with defective foundations in 1995 which now need remedial work to mitigate against the risk of structural collapse of part of the building. The defects in the foundations fall within the definition of a relevant defect as the building was completed within the past 30 years and give rise to a building safety risk. The leaseholder protections therefore apply to the costs associated with remediating the foundations

Section 121 – Associated persons

Effect

961 This section sets out the circumstances in which a person is associated with a partnership or body corporate for the purposes of sections 122 to 125 and Schedule 8.

962 Subsection (2) sets out that if an interest in a relevant building is held on trust at the qualifying time, then any body corporate or partnership which is a beneficiary of the trust at the qualifying time is considered associated. The "qualifying time" is defined in section 119 as the start of 14 February 2022. The five-year period leading up to the qualifying time is defined as "the relevant period". Subsection (11) defines partnership for the purposes of this section.

963 Subsections (3) and (4) set out the circumstances in which a person is associated with a body corporate. Subsection (5) sets out the circumstances in which a body corporate is associated with another body corporate.

964 Subsection (3) sets out that a partnership is associated with any person who was a partner, other than a limited partner, in the partnership in the five years ending at the qualifying time.

965 Subsection (4) provides that a body corporate is associated with any person who was a director of the body corporate in the five years leading up to the qualifying time.

966 Subsection (5) sets out the circumstances in which a body corporate is associated with another body corporate. Subsection (5)(a) sets out that two bodies corporate are associated if, in the five years leading up to 14 February 2022, they had a director in common. Subsection (5)(b) sets out that two bodies corporate are associated if, before 14 February 2022, one of them controlled the other or a third body corporate controlled both of them.

967 Subsections (6) to (8) set out the cases in which a body corporate is regarded as controlling another body corporate by looking at the ownership of the share capital and setting out how differing voting rights at general meetings have an impact on whether or not the companies are associated.

968 Subsection (6) sets out what control looks like between differing companies. In particular, it sets out that one body corporate controls another if one of them possesses or is entitled to acquire: at least half of the issued share capital of the other; half the voting rights exercisable in the general meetings of the other; at least half of the other's income if all the income was distributed amongst the shareholders; or, rights which would entitle it to half the assets of the other which are available for distribution amongst the shareholders in the event of the other winding up.

969 Subsection (7) sets out how to work out the circumstances when a body corporate (X) controls a limited liability partnership (Y). In this case, X has control of Y if: X holds the majority of the voting rights in Y; X is a member of Y and has the right to appoint or remove a majority of other members; or, X is a member of Y and controls the majority of the voting rights in Y (either alone or through agreements with other members).

970 Subsection (8) sets out if a body corporate has the power to ensure another acts in the way in which it wishes, then that body corporate has control of the other.

971 Subsection (9) defines voting rights for the purposes of subsection (7). Voting rights are the rights conferred on members in respect of their interest in Y to vote on matters decided on by a vote by members of Y.

972 Subsection (10) sets out that a body corporate is treated as possessing any rights and powers possessed by a person as nominee for it (such as a director) and any rights and powers possessed by a body corporate which it controls. The effect of subsection (9) is that bodies corporate which are not directly associated can be taken as associated if there is a chain of associated bodies corporate which connects them.

973 Subsection (12) provides a power for the Secretary of State to set out in regulations that the application of subsections (3) to (5) can be modified for the purposes of sections 122 to 125 and Schedule 8. This allows the application of this section to be modified in relation to any reference to associated persons.

Background

974 Sections 122 to 125 and Schedule 8 include several references to associated persons. Sections 124 and 125 give powers to the courts to require persons associated with freeholders, superior landlords, and developers to make certain payments in respect of relevant defects. Paragraph 2 of Schedule 8 provides that no service charge is payable in respect of a relevant defect for which a relevant landlord, or a person associated with a relevant landlord, is responsible. Paragraph 3 provides that no service charge is payable if the landlord's group meets the contribution condition, where the landlord group is defined as the relevant landlord and any person associated with the relevant landlord.

975 It is common practice for owners of freehold and superior lease interests in multi-occupied residential buildings to use thinly capitalised subsidiary companies, often termed special purpose vehicles, to hold these interests. This can result in highly complex corporate structures where the ultimate beneficial owner of the interest is obscured.

976 The leaseholder protections provisions impose new liabilities on freeholders and superior landlords (defined in paragraph 2 of Schedule 8 as "relevant landlords") to pay in full for or contribute to the costs of the remediation of relevant defects. It will often be the case that the entity that owns the interest in the building is a thinly capitalised company with limited assets but is part of a well capitalised wider group structure. The associated persons provision, when taken alongside the relevant provisions in sections 124 and 125 and Schedule 8 allow the assets of the wider group structure to be accessed in connection with the remediation of relevant defects.

977 As well as allowing companies associated with freeholders and superior landlords to be required to make payments in respect of relevant defects, section 124 also gives the First-tier Tribunal the ability to require developers and their associated companies to make payments. It is also common practice for developers to use special purpose vehicles which are wound up after the completion of the development. The associated persons provision similarly allows the assets of the wider group structure to be accessed.

978 The definitions used within this section have a basis in the Petroleum Act 1998 and the Corporation Tax Act 2010. Section 131 of this Act contains a similar definition of associated persons which applies for the purpose of allowing the High Court to make building liability orders (to which see section 130).

Proposed use of power

979 The power at section 121(12) will allow modifications to be made to subsections (3) to (5) in respect of the application of those subsections to the application of the associated persons tests in sections 122 to 125 and Schedule 8. This is because a slightly different definition of associated persons may be appropriate to the circumstances in which the test is used.

Example

A body corporate A shares all of its directors with a body corporate B. It could be argued that A is able to ensure that B acts how A wishes B to conduct its affairs.

B controls 100% of the voting rights exercisable in the general meetings of body corporate C.

C is a member of a limited liability partnership of which bodies corporate D and E are also members.

D controls the majority of the voting rights in the limited liability partnership.

Due to these connections and subsection (6), A, B, C, D and E are associated under section 121.

If B is the freeholder of a building for which A was the developer, then B is classed as being associated with the developer. For the purposes of paragraph 2 of Schedule 8, this means that B is responsible for any initial defects contained within the building.

If a relevant building contains relevant defects, and any of A, B, C, D or E had an interest in the building, then the First-tier Tribunal could require A, B, C, D and E to make payments in respect of remediating the relevant defects through a remediation contribution order under section 124

Section 122 – Remediation costs under qualifying leases

Effect

980 This section inserts new Schedule 8 – Remediation costs under qualifying leases etc.

981 Schedule 8 makes provision about the payment of service charge amounts relating to relevant defects (defined in section 120). It provides that certain service charge amounts relating to relevant defects in relevant buildings are not payable under certain leases.

982 Schedule 8 also makes provision for the recovery of amounts which are not recoverable under leases from landlords of the building.

Background

983 The explanatory note to section 116 sets out the context of the leaseholder protections provisions. Most flats in multi-occupied residential buildings in England are owned on long leases, where (in the simplest cases) a freeholder owns the building and the land it sits on, and the leaseholders own the units within the building on long leases. The freeholder is responsible for the maintenance and upkeep of the building. The leases, which are contractual agreements between the leaseholder and freeholder, allow the costs associated with maintenance to be passed by the freeholder through the service charge to the

leaseholders. Since the Grenfell Tower fire in 2017 it has become apparent that a large number of multi-occupied residential buildings have serious building safety defects which need to be remediated, often at significant cost to the leaseholders.

984 Schedule 8 makes provision for service charge payments in respect of relevant defects not to be payable by leaseholders in certain circumstances. By limiting or preventing altogether the amounts that are payable in respect of these defects from being passed on to the leaseholders through the service charge, leaseholders are protected from the costs associated with their remediation.

985 Schedule 8 removes the existing legal presumption under most leases that leaseholders are liable in full for the costs associated with remediating relevant defects. The Schedule and powers contained within it make provision for liability to sit in the first instance with landlords who are deemed to be responsible for the creation of those defects, and then with landlords that can afford to meet the costs in full. Where neither of these circumstances applies in respect of any relevant landlord, the Schedule provides for an equitable spread of costs, commensurate with a party's likely ability to contribute to costs, by allowing for capped leaseholder contributions to be recovered (up to "the permitted maximum") in certain circumstances; and for relevant landlords to be liable for any amounts that are not recoverable from leaseholders.

986 The Schedule sets out that, in relation to historical building safety defects, "no service is payable" in certain circumstances, and in other circumstances that the service charge is only payable if it "does not exceed the permitted maximum". These provisions in the Schedule apply from commencement (two months after Royal Assent of the Act, or 28 June 2022): from that date, the service charge protections apply. The protections apply equally irrespective of when any service charge demands were issued by landlords or managing agents. This means that, even if a valid service charge demand was issued prior to commencement, provided that the service charge had not already been paid by the leaseholder, the demand is no longer valid after commencement insofar as it does not comply with the provisions set out in the Schedule. In practice, this means that managing agents and landlords will need to rescind service charge demands issued prior to commencement where they relate to historical building safety defects. Where landlords are entitled to recover some costs from leaseholders according to the Schedule, they will need to issue new service charge demands which comply with the provisions set out in the Schedule.

987 Further detail on the provisions contained within Schedule 8 are set out in the explanatory notes to the Schedule.

Section 123 – Remediation orders

Effect

988 This section makes provision about remediation orders. Subsection (1) provides a power for the Secretary of State to make regulations for and in connection with remediation orders. Subsections (2) to (7) make further provision about remediation orders.

989 Subsection (2) sets out that a remediation order is made by the First-tier Tribunal. A remediation order can be made by the Tribunal on the application of an interest person (defined in subsection (5)). A remediation order can require a landlord to remedy specified relevant defects in a specified time (the meaning of "specified" is set out at subsection (6)). This means that the Tribunal can order a landlord to undertake certain work to remediate their building within a specified timeframe.

990 Subsections (3) and (4) define a "relevant landlord" against which the Tribunal may make a remediation order. "Relevant landlord" means a landlord who has an obligation to repair or maintain the building and subsection (4) sets out that the term includes, for the purposes of this section, persons who are party to the lease even if they are not a landlord or tenant. This means that remediation orders can be made against management companies with repairing obligations, as well as against freeholders and superior landlords such as head lessees with repairing obligations.

991 Subsection (5) provides a definition of "interested person" meaning the persons who are eligible to apply for to the First-tier Tribunal for a remediation order against a relevant landlord. These persons are the Building Safety Regulator, the local authority for the area in which the building is located, the fire and rescue authority for the area in which the building is located, and any person with a legal or equitable interest in the building or any part of it. A person with a legal or equitable interest in the building will include, for example, leaseholders of flats within the building, as well as the freeholder and other relevant landlords for the building. Subsection (5)(e) provides that the list of interested persons may be expanded through regulations made by the Secretary of State.

992 Subsection (6) provides that "specified" means specified in the order, which means that the First-tier Tribunal can determine, for example, to whom a remediation order applies, to which relevant defects it applies, and the period in which defects need to be remediated.

993 Subsection (7) ensures that decisions made by the First-tier Tribunal in connection with remediation orders are enforceable. It means that any decision of the First-tier or Upper Tribunal under or in connection with a remediation order, other than a decision ordering the payment of a sum, will be enforceable with the permission of the county court in the same way as orders of the county court. The general position is that the Tribunal does not have enforcement powers of its own, other than powers to enforce payment for a sum of money. As such, where it is necessary to have powers to enforce other decisions of the Tribunal, it is usual to insert a provision in legislation to enable the county court to enforce those decisions.

Background

994 As discussed in the explanatory note to section 116, flats in most multi-occupied residential buildings in England are owned on long leases. The building itself and the land on which it is located are owned by a freeholder, and the flats within the building are owned on long leases by the leaseholders. The freeholder is responsible for the maintenance and upkeep of the building and the terms of most leases allow the costs associated with the building's maintenance and upkeep to be passed through the service charge to leaseholders.

995 Significant decision-making power rests with the landlord responsible for maintaining the building in determining whether a building should be remediated, and the extent of work that is to be commissioned. Where leaseholders have been liable in full for these costs this has at times resulted in some landlords taking an overly risk-averse approach and commissioning costly remediation which may not be needed. At the same time, some landlords have been slow to commission and undertake even life-safety critical work on buildings, even where the Government is providing funding for the work.

996 Schedule 8 makes changes to the preexisting legal position that leaseholders are liable in full for these costs by limiting the costs that can be passed through the service charge in respect of relevant defects. Landlords will now be liable for some or all these costs. It is expected that this change will reduce instances of the commissioning of unnecessary work as landlords will now be disincentivised from taking an overly risk-averse approach to remediation, due to being liable to at least part-fund the work themselves.

997 Remediation orders will ensure that essential remediation work needed to remedy relevant defects can take place, especially where landlords are not fulfilling their obligations as regards the safety of the building. Remediation orders will allow interested parties to apply to the First-tier Tribunal for an order requiring a relevant landlord to remedy specified relevant defects. This will redress the balance of power in favour of leaseholders by allowing leaseholders and other interested parties to apply to the Tribunal to insist on remediation work being done.

998 Parties with the ability to apply for remediation orders are those with a regulatory or oversight function – the Building Safety Regulator, the relevant local authority, and the relevant fire and rescue service; and those with a direct interest in the building, including leaseholders.

Proposed use of power

999 The power at subsection (1) allows the Secretary of State to make regulations for and in connection with remediation orders. This will allow further detail in connection with remediation orders to be set out. The power also provides important flexibility for the future. It is expected that the Government will monitor progress with remediation following the commencement of these provisions. Should further provision need to be made in connection with remediation orders to facilitate the remediation of buildings with relevant defects, this power will provide that flexibility to respond.

1000 The power at subsection (5)(e) will allow the Secretary of State to prescribe further persons who can apply for a remediation order, should the need to do so become apparent.

Example

A high-rise residential building has a number of historical cladding and non-cladding defects. Despite the remediation of these defects being life-safety critical, work to remediate them has not yet started, three years after they have been identified. The fire and rescue authority inspects the building and considers that the work needs to begin to make the building safe. The landlord does not undertake the work despite leaseholders and the fire and rescue authority attempting to contact them to insist on the work getting underway. The fire and rescue authority applies to the First-tier Tribunal for a remediation order. The Tribunal issues a remediation order, ordering the landlord to remedy the defects within a specified period.

Section 124: Remediation contribution orders

Effect

1001 This section makes provision about remediation contribution orders. Subsection (1) sets out that a remediation contribution order can be made by the First-tier Tribunal (the Tribunal) if it considers it just and equitable to do so.

1002 Subsection (2) provides that the Tribunal can make a remediation contribution order in relation to a relevant building (defined in section 117). A remediation contribution order can be made by the Tribunal on the application of an interested person (to which see subsection (5)) to require a company to make payments in connection with the remediation of relevant defects.

1003 Subsection (3) sets out that a remediation contribution order can be made against a landlord for the building, a person who was a landlord at the qualifying time (the start of 14 February 2022), or the building's developer; as well as any person associated with any of these parties (where "associated" has the meaning given in section 121).

1004 Subsection (4) sets out that a remediation contribution order can require payments to be made to fix relevant defects in a building and at a specified time.

1005 Subsection (5) sets out definitions that are relevant to the section. "Associated", "partnership", "relevant building" and "relevant defect" are all defined in the preceding sections. "Developer" is defined as a person who built or commissioned the construction of the building or part of the building, with a view to granting or disposing of interests in the building or parts of it, for example by selling flats in the building following its construction. "Specified" means specified in the order, which means that the Tribunal can determine, for example, to whom a remediation contribution order applies, to which relevant defects it applies, and to whom payments under the order need to be made.

1006 An "interested person" is defined in subsection (5). An interested person is a person who may apply to the Tribunal for a remediation contribution order. These persons are the Secretary of State, the Building Safety Regulator, the local authority for the area in which the

building is located, the fire and rescue authority for the area in which the building is located, and any person with a legal or equitable interest in the building or any part of it. A person with a legal or equitable interest in the building will include, for example, leaseholders of flats within the building, as well as the freeholder and other relevant landlords for the building. Paragraph (f) provides that the list of interested persons may be expanded through regulations made by the Secretary of State.

1007 Subsection (6) allows the Secretary of State to expand, by regulations, the provision under this section to buildings that would be relevant buildings but for section 117(3). Section 117(3) provides an exemption from the definition of "relevant building" for collectively enfranchised buildings and those which are on commonhold land. The effect of subsection (6) is to allow the Secretary of State to provide that remediation contribution orders can apply to this class of buildings, in addition to those which are defined as relevant buildings in section 117.

Background

1008 The explanatory note to section 121 discusses how it is common practice for owners of freeholds of multi-occupied residential buildings (as well as owners of other superior lease interests in those buildings) to use thinly capitalised companies such as special purpose vehicles to hold the interests. While the freeholder itself often has very limited capital, these entities are often part of well-resourced wider group structures.

1009 The explanatory note to section 122 explains how the leaseholder protections provisions in Schedule 8 operate. The provisions protect leaseholders by preventing altogether or otherwise limiting the costs that can be passed through the service charge to leaseholders in connection with relevant defects. Where costs are not otherwise recoverable under leases, the Schedule, and powers made under it, make provision for those amounts to be recovered from landlords under leases of the building including the freeholder and superior landlords such as headlessees. This means that under the provisions of Schedule 8, landlords, including freeholders and headlessees, are liable for some or all of the costs connected with remediating their buildings.

1010 It is important that, where costs in relation to relevant defects are not recoverable from leaseholders, that funding is made available so that work to remediate defects can take place promptly and buildings can be made safe. Remediation contribution orders support this aim in two ways.

1011 The first way in which remediation contribution orders are intended to contribute to the timely remediation of buildings is by providing a new legal remedy to require developers to pay for the costs of remediation. If the Tribunal considers it just and equitable, it can require a developer for the building to make payments in connection with remedying relevant defects. A wide range of parties can apply for remediation contribution orders: as well as the Secretary of State and regulatory bodies such as the Building Safety Regulator, persons with a legal or equitable interest in the building can apply for an order. Persons with a legal or equitable interest include, for example, the freeholder of the building, superior landlords such as headlessees, and leaseholders.

1012 As discussed above, freeholders and landlords will have new liabilities to pay for remediation costs under Schedule 8. Remediation contribution orders will allow landlords to seek to recover these costs from the building's developer by applying to the Tribunal for an order against the developer. Similarly, leaseholders would have the ability to apply for an order against the developer; for example, if leaseholder contributions are required under Schedule 8, or if leaseholders have already paid costs towards remediation before the coming into force of the leaseholder protections, they may wish to seek to recover these costs using a remediation contribution order.

1013 As discussed in the explanatory note to section 121, it is also common practice for residential property developers to use special purpose vehicles which are wound up on completion of the project. Remediation contribution orders can also be made against persons associated with the developer; this will include, for example, parent companies where developments have been run through special purpose vehicles which are thinly capitalised or have since been wound up.

1014 The term "developer" is defined at subsection (5). The Government has agreed with large residential property developers that they will remediate buildings that they had a role in refurbishing or developing in the past 30 years. It is therefore unlikely that remediation contribution orders would need to be made against this group of developers. However, developers who have not made an agreement with the Government will be in scope of remediation contribution orders.

1015 Remediation contribution orders made against developers complement other legal remedies expanded and created by this Act, which allow those responsible for building safety defects to be held to account. These other remedies include the extension of the limitation period under section 1 of the Defective Premises Act (section 135), building liability orders (sections 130 to 132), and the new cause of action against the manufacturers of defective construction products (sections 147 to 151).

1016 The second way in which remediation contribution orders are intended to contribute to timely remediation is by ensuring landlords meet their obligations under the leaseholder protections provisions. Schedule 8 makes provision for liability in connection with the remediation of historical building safety defects to sit with freeholders and landlords. This liability applies irrespective of whether costs can be recovered from a third party such as a developer. Where the developer does not step forward or cannot be identified, and external sources of funding cannot be found, this means that building owners and landlords will need to meet the costs of remediation from their own resources. Even where legal claims are possible, the Government has been clear that seeking to recover costs from third parties cannot delay remediation taking place, and that building owners and landlords must not wait until the outcome of legal claims before commencing building work, meaning that in some circumstances, freeholders will need to forward-fund remediation to ensure that work can take place.

1017 It is expected that landlords will comply with their new obligations to forward-fund, or fund in full from their own resources, the remediation of their own buildings. Should a party with a liability in relation to building safety remediation be failing to meet its obligations, remediation contribution orders will allow the Tribunal to require payments to

be made. In particular, remediation contribution orders will allow companies associated with relevant landlords to be required to make payments in connection with remediation; this will allow, for example, well-capitalised wider group structures of thinly capitalised special purpose vehicles to be ordered to contribute to remediation costs.

1018 A wide range of parties are able to apply for remediation contribution orders. This includes the Government and regulatory bodies with a role in monitoring, regulating, and enforcing building safety – the Secretary of State, the Building Safety Regulator, the relevant fire and rescue authority and the relevant local authority. In addition, those with a legal or equitable interest in the building can apply for an order. This includes leaseholders as well as freeholders and landlords for the building. Remediation contribution orders will ensure that all relevant landlords with a liability to pay for remediation under the Schedule meet their obligations.

1019 Subsection (1) provides that the Tribunal can only make a remediation contribution order if it considers it just and equitable to do so. This is intended to ensure fairness in proceedings while giving the Tribunal a wide decision-making remit which it is expected will allow it to take all appropriate factors into account when determining whether an order should be made, including the wider public interest in securing the safety of buildings, as well as the rights and interests of the individual against whom an order might be made.

Proposed use of power

1020 The power at subsection (5)(f) will allow the Secretary of State to prescribe further persons who can apply for a remediation contribution order, should the need to do so become apparent.

Example 1

The freeholder for a building is liable for the costs of remediating it under Schedule 8. Having forward funded the remediation, they apply for a remediation contribution order against the parent company of the developer who developed the building. The Tribunal considers that it would be just and equitable to order the developer to make payments to the freeholder in connection with the remediation of the building. The Tribunal issues an order against the company, ordering it to make payments in connection with fixing specified relevant defects. The order specifies that the payments must be made within a specified timeframe.

Example 2

The freeholder for a building is liable for the costs of remediating it under Schedule 8. Two years after the identification of the relevant defects, the freeholder has failed to commission or pay for the work that is needed. The freeholder is a thinly capitalised shell company which is part of a wider group of companies that own multiple freeholds. The fire and rescue authority applies to the Tribunal for a remediation contribution order. The Tribunal consider that it is just and equitable to issue a remediation contribution order and orders the freeholder's parent company to make payments to remediate the defects in the building.

Section 125 – Meeting remediation costs of insolvent landlords

Effect

1021 This section makes provision in connection with the insolvency process as it applies to landlords under leases of relevant buildings.

1022 Subsection (1) sets out the circumstances under which section 125 applies. Section 125 applies in relation to the winding up of a company which is also a landlord under a lease of a relevant building (to which see section 117) or any part of it, for example the freeholder or headlessee of the building. There are a number of different ways in which a company can be "wound up" including compulsory liquidation and company voluntary arrangements.

1023 Subsections (1)(a) and (1)(b) set out that section 125 applies if, in the winding up of the company that is a landlord under a lease of a relevant building, there are relevant defects (to which see section 120) relating to the building, and the company is under an obligation to remedy those defects or is liable to pay costs in relation to remedying the defects.

1024 Subsection (2) sets out that section 154 applies when the insolvency practitioner in relation to the winding up of the company makes an application to the court. "Insolvency practitioner" is defined in subsection (4) as having the same meaning as in section 388 of the Insolvency Act 1986. "The court" means the court with the jurisdiction to wind up the company.

1025 On the application of the insolvency practitioner, the court can make an order against a body corporate or partnership (which has the meaning given in section 121) associated with the company being wound up.

1026 The order made by the court can either require the associated company to make contributions to the assets of the company being wound up, or to make payments for the purpose of meeting the costs associated with remedying relevant defects. In both cases, the court must consider that it is just and equitable to make the order.

Background

1027 The explanatory note to section 122 discusses how Schedule 8 protects leaseholders from costs associated with remediating historical building safety defects, and imposes liability on landlords under leases of relevant buildings, in connection with costs associated with relevant defects that are not recoverable from leaseholders.

1028 It is important that, where costs cannot be recovered from leaseholders, funding is available to ensure the timely remediation of defects. Section 125 is intended to secure funding for remediation should a company with an obligation to remediate or pay for the remediation of relevant defects go through the insolvency process.

1029 Insolvency is the process by which a company stops doing business. The insolvency process in the United Kingdom is governed by the Insolvency Acy 1986. There are a number of different ways a company can be "wound up" which are covered by the Act including compulsory liquidation, where a company cannot pay its debts; and voluntary liquidation, where a company can pay its debts, but its directors choose to close it down. Section 125 covers all these processes.

1030 When a company is wound up, an insolvency practitioner will be appointed to manage the insolvency process. There are different types of insolvency practitioner depending on the type of insolvency process the company is going through – these are set out in section 388 of the Insolvency Act and include liquidators and administrators.

1031 The explanatory notes to sections 121 and 124 discuss how it is common for freehold interests in multi-occupied residential buildings to be held as thinly capitalised special purpose vehicles which are part of much bigger group structures, which are often well-capitalised. Section 121 defines "associated company" for the purposes of this section.

1032 Section 125 mitigates against the use of the insolvency process for freeholders and landlords to avoid responsibilities to pay for remediation of defects for which they are liable under Schedule 8 of this Act. In the process of winding up a company, it allows the insolvency practitioner to apply to the court to make an order requiring companies associated with the landlord to make contributions in connection with the remediation of relevant defects.

1033 The order can be made in one of two ways. First, it can require an associated company to contribute directly to the assets of the company being wound up. However, if the company has debts not related to the remediation of relevant defects, the contribution would in these circumstances preferentially be directed towards meeting the company's debts, and this would not secure the remediation of the building. Therefore, the second way in which the

order can be made allows the court to order that the associated company must make specified payments directly in connection with the remediation of those defects. This will ensure that the payments made by the associated company pay towards remediating the building.

1034 Similar to the provisions at section 124, the court can make an order under section 125 if it considers that it is just and equitable to do so. This is intended to ensure fairness in proceedings while giving the court a wide decision-making remit which it is expected will allow it to take all appropriate factors into account when determining whether an order should be made, including the wider public interest in securing the safety of buildings, as well as the rights and interests of the individual against whom an order might be made.

> ### Example
> A freeholder for a relevant building has a liability to pay for the remediation of certain defects in a relevant building. The company which owns the freehold goes insolvent. An insolvency practitioner is appointed to oversee the insolvency process. Because the building has a number of defects which are yet to be remediated, the insolvency practitioner applies to the court for an order against the parent company of the freeholder. The court considers that it would be just and equitable to make the order against the parent company and orders the company to make payments to remediate the defects for which the freeholder is responsible.

Building industry schemes

Section 126: Building industry schemes

Effect

1035 This section gives the Secretary of State a power to establish through affirmative regulations a scheme or schemes for the building industry.

1036 A scheme may be established for any purpose connected with securing the safety of persons in or about buildings in relation to risks arising from buildings, or improving the standard of buildings, including by securing those persons in the building industry remedy defects in buildings or contribute to costs associated with remedying defects in buildings.

1037 Regulations under this section may, among other things, prescribe eligibility for a scheme, the conditions eligible persons must meet to become and remain members of a scheme and may provide for different categories of membership.

1038 The measures set out in section 58, which covers the Building Safety Levy, and sections 128 and 129, which cover the planning and building control prohibitions, may be applied to persons who are eligible for membership of a scheme but who are not members.

Background

1039 This is a new provision.

Proposed use of power

1040 This provision gives Government a wide power to establish a building industry scheme. Such a scheme may distinguish between building industry actors that have committed to act responsibly and make buildings safe, and irresponsible actors who have failed to do so. A scheme supports the objective of holding industry to account with regard to fixing building safety defects and in respect of other obligations which may be prescribed in connection with membership of a scheme. Conditions for membership may include, for instance, conditions relating to the remedying of defects in buildings to which an industry actor has a connection and making financial contribution towards remediation of defects in other buildings. The existence of a scheme and its membership will enable the Government and other parties to identify industry actors who are acting in a responsible way with respect to building safety, including in connection with remedying historic safety defects.

1041 Secondary legislation will be laid as soon as practicable. Regulations to establish a scheme will define who is eligible to be a member and set out membership conditions which may include conditions relating to the matters mentioned above; conditions restricting or prohibiting members' use of prescribed construction products; conditions relating to the provision of information to the Secretary of State; and to the competence or conduct of individuals connected with a person who is eligible for scheme membership. This section also allows for differential membership categories and for the maintaining of lists, including in relation to scheme eligibility and scheme membership.

> Example
>
> The Secretary of State may set up a building industry scheme for residential property developers (or a specified group of residential property developers).
>
> The Secretary of State may in regulations set the eligibility criteria and membership conditions for this scheme. Developers who meet the eligibility criteria but who elect not to join the scheme because, for example, they do not wish to comply with the applicable membership conditions may be subject to the measures in Sections 128 and 129.

Section 127: Building industry schemes: supplementary

Effect

1042 This section is supplementary to section 126 and provides further detail of regulations which may be made in connection with the establishment of a building industry schemes under section 126.

Background

1043 This is a new provision.

Proposed use of power

1044 Regulations will provide further detail on how a building industry scheme/s may operate, including membership processes (such as those relating to joining, suspension and termination of membership) and further detail on membership conditions, as well as provision for the charging of fees, the determination of disputes relating to a scheme and winding down a scheme/s once its aims have been achieved.

1045 This section also sets out the meaning of key words in relation to this section.

Prohibition on development and building control

Section 128: Prohibition on development for prescribed persons

Effect

1046 This section confers power on the Secretary of State to prohibit a person of a prescribed description from carrying out development of land in England, including where development has planning permission, through affirmative Regulations. This includes persons who are eligible to be members of a Building Industry Scheme (sections 126 and 127) but are not members of that scheme.

1047 This section also sets out other provisions that the regulations may make, including that they may make provision for enforcement, including applying, with or without modifications, the enforcement provisions of Part 7 of the Town and Country Planning Act 1990.

1048 This provision, together with the powers to make regulations to impose building control prohibitions detailed in section 129, may be imposed on persons who are eligible to join a building industry scheme but who do not join (because, for example, they do not meet or comply with the scheme membership conditions prescribed) and will encourage eligible persons to join and remain members of a scheme.

1049 A prohibition may be imposed for any purpose connected with securing the safety of persons in or about buildings in relation to risks arising from buildings, or improving the standards of buildings, including by securing that persons in the building industry remedy defects in buildings or contribute to costs associated with remedying defects in buildings.

1050 This section also sets out other provisions that the regulations may make, including that they may make provision for enforcement, including applying, with or without modifications, the enforcement provisions of Part 7 of the Town and Country Planning Act 1990.

Background

1051 This is a new provision.

Proposed use of power

1052 This power will enable the Government to impose a prohibition on a person for any purpose connected with securing the safety of persons in or about buildings or improving the standards of buildings, including by securing the remedying of defects in buildings or contribution to costs associated with remedying defects in buildings. It may be used to support the above principle and ensure that the industry responsible for building unsafe buildings takes responsibility for remedying defects in buildings and contributes to costs associated with building remediation

1053 This provision, together with the powers to make regulations to impose building control prohibitions detailed in section 128, may be imposed on persons who are eligible to join a building industry scheme but who do not join (because, for example, they do not meet or comply with the scheme membership conditions prescribed) and will encourage eligible persons to join and remain members of a scheme.

Example

The Secretary of State may, in particular, make Regulations to prohibit persons who are eligible to be members of a Building Industry Scheme (sections 126 and 127) but are not members of that scheme from carrying out development of land in England through affirmative Regulations.

These Regulations may also require developers to submit a notification relating to development and may make provision about the content and form of a notification and the way in which it is to be given. For example, a notification requirement could include information about when development is expected to begin or has begun and who the persons carrying out development will be or are, and if different persons will be carrying out development. Another example is that they could require persons to identify their status in relation to a building industry scheme and whether they are controlled by any other persons and those persons' scheme status.

Regulations may also specify the prescribed development that will be affected by a prohibition; for example, they may limit a prohibition to different types of development based on size of a proposed development or a proposed use.

Regulations may make provision for enforcement, including applying, with or without modifications, Part 7 of the Town and Country Planning Act 1990. For example, by making the carrying out of development in breach of a prohibition a breach of planning control to which the enforcement powers in Part 7 apply, including the powers to issue a notice requiring cessation of development.

The Regulations may also provide that a certificate under the Town and Country Planning Act 1990 may not be granted in particular circumstances. For example, they could remove the ability to obtain a certificate of lawful development in respect of development carried out in breach of the prohibition.

Section 129: Building control prohibitions

Effect

1054 This section gives the Secretary of State powers to impose a building control prohibition in relation to a person of a prescribed description.

1055 The persons who may be prescribed under this section may include persons who are eligible to be a member of a building industry scheme (as detailed in sections 126 and 127) but are not members of such a scheme.

1056 A building control prohibition according to this section will apply despite any provision made by or under the Building Act 1984. This section also details that the regulations may contain exceptions and may provide that anything done in contravention of the regulations is of no effect.

1057 This section is not retrospective. Building control approval that has already been granted to a prescribed person will not be revoked.

Background

1058 This is a new provision.

Proposed use of power

1059 This power will enable the Government to impose a building safety prohibition on a person for any person connected with securing the safety of persons in or about buildings or improving the standards of buildings, including by securing the remedying of defects in buildings or contribution to costs associated with remedying defects in buildings. It may be used to support the above principle and ensure that the industry responsible for building unsafe buildings takes responsibility for remedying defects in buildings and contributes to costs associated with building remediation.

1060 The building control prohibitions, together with the prohibition on development detailed in section 128, may be imposed on persons who are eligible to join a building industry scheme but who do not join (because, for example, they do not meet or comply with the scheme membership conditions prescribed) and will encourage eligible persons to join and remain members of a scheme.

Example

The Secretary of State will have the authority to provide those local authorities (and approved inspectors/registered building control approvers) must refuse building control approval to person prescribed under this section.

For example, if a developer who is eligible to join a building industry scheme but is not a member applies for building control approval, by giving an initial notice or depositing plans for a development, this will not be granted where that developer has been prescribed by regulations made under this section.

Prescribed persons will also be prevented from obtaining a certificate of completion or final certificate for developments which have received other building control approval at earlier stages.

Building liability orders

Section 130: Building liability orders

Effect

1061 This section confers a power on the High Court to grant building liability orders if they consider it just and equitable to do so.

1062 Subsection (2) provides that a building liability order will extend a relevant liability of a body corporate (A) so that it will also be a liability of another specified body corporate (B) and that A and B can be made joint and severally liable for the relevant liability.

1063 The effect will be that a person with a claim arising from a relevant liability can sue both A and B and, if the claim is successful, the assets of both A and B can be considered when damages are awarded.

1064 Subsection (3) defines which liabilities are relevant liabilities for the purposes of building liability orders. The relevant liabilities are liabilities under the Defective Premises Act 1972., section 38 of the Building Act 1984, or liabilities which are incurred as a result of a building safety risk. A building safety risk is a risk to the safety of people in or about a building arising from the spread of fire or structural failure.

1065 Apart from under the Defective Premises Act 1972, which relates to the provision and refurbishment of dwellings, there is no constraint on the types of buildings a relevant liability can be incurred in relation to and therefore no constraint on the types of buildings for which a building liability order may be requested.

1066 Building liability orders may be granted in relation to a relevant liability which was incurred prior to this section commencing as long as the limitation period for the relevant liability has not expired.

1067 Subsection (4) states that B can only have a building liability order applied to it if it has been associated with A at any point between the time when A started carrying out the works which incurred the relevant liability and the building liability order being applied. The definition of "associates" is provided by section 131 of this Act.

1068 Subsection (5) states that a building liability order can be applied to B even when A has dissolved. A building liability order also continues to apply to B if A dissolves after the order has been made.

1069 Subsection (6) defines terms used in this section.

Effect on Wales

1070 This section applies to England and Wales.

Background

1071 This is a new provision.

1072 A practice used in property development is where a subsidiary company (which may be thinly capitalised) is set up to own and manage a development on the behalf of the corporate group it is a part of. The subsidiary company is often wound up once the development has been completed. A consequence of this practice is that the corporate group has no long-term liability for its developments.

1073 Building liability orders have been designed to address the consequence described above, given the context of the wider building safety issues which have been discovered within medium and high-rise buildings.

1074 The assessment is that relying upon English common law to address this consequence would be insufficient.

Example

A 14 storey residential building is developed by a body corporate A. A few years after it is completed later, it is discovered that there are serious fire compartmentation issues within the building and the local fire and rescue authority order the building to be evacuated until the risk from fire is reduced. To seek recompense for the remediation costs, the freeholder speaks to lawyers about whether they can make a civil claim. The lawyers advise the freeholder that they can make a claim under the Defective Premises Act as the building is unfit for habitation.

The freeholder discovers the development company was dissolved once the building was completed and the freehold sold off. The freeholder's lawyers advise that they can establish that the development company's parent company is associated, as the parent company directly controlled the actions of the development company.

The freeholder applies to the High Court for a building liability order to be applied to the parent company. The freeholder must show that the parent company is associated with the development company. The High Court must consider whether it is just and equitable to grant the building liability order, for example whether the parent company can receive a fair trial.

In this example, the request for a building liability order is granted. The freeholder can now make a claim under the Defective Premises Act against the parent company. The court proceedings would then proceed as normal.

Section 131: Building liability orders: associates

Effect

1075 This section defines when bodies corporate are associated for the purposes of section 130. When two bodies corporate are associated then section 130 confers a power on the High Court to apply a Building Liability Order to them.

1076 Subsection (1) defines a body corporate (A) as being associated with a body corporate (B) if one controls the other, in which case they would have a parent and subsidiary relationship, or if both A and B are controlled by a third company, in which case A and B would be sister companies.

1077 Subsections (2) to (4) provide further definitions.

1078 Subsection (2) sets out that one body corporate controls another if one of them possesses or is entitled to acquire: at least half of the issued share capital of the other; half the voting rights exercisable in the general meetings of the other; at least half of the other's income if all the income was distributed amongst the shareholders; or, rights which would entitle it to half the assets of the other which are available for distribution amongst the shareholders in the event of the other winding up.

1079 Subsection (3) sets out when a body corporate (X) controls a limited liability partnership (Y). X has control of Y if: X holds the majority of the voting rights in Y; X is a member of Y and has the right to appoint or remove a majority of other members; or, X is a member of Y and controls the majority of the voting rights in Y (either along or through agreements with other members).

1080 Subsection (5) defines voting rights for the purposes of subsection (3). Voting rights are the rights conferred on members in respect of their interest in Y to vote on matters decided on by a vote by members of Y.

1081 Subsection (4) sets out if a body corporate has the power to ensure another acts how it wishes it to, then that body corporate has control of the other.

1082 Subsection (6) sets out that for the purposes of subsections (1A) to (4) of this section, a body corporate is treated as possessing any rights and powers possessed by a person as nominee for it (such as a director) and any rights and powers possessed by a body corporate which it controls.

1083 The effect of subsection (6) is that bodies corporate, which are not directly associated, can be taken as associated if there is a chain of associated bodies corporate which connects them.

1084 Subsection (7) sets out that if an interest in a building is held on trust, and a relevant liability is incurred in relation to that building (as defined by section 130), a body corporate which is a beneficiary of the trust is considered associated.

Effect in Wales

1085 This section applies to England and Wales.

Background

1086 This is a new provision.

1087 The definitions used within this section have a basis in the Petroleum Act 1998 and the Corporation Tax Act 2010.

Example

A body corporate A shares all of its directors with a body corporate B. It could be argued that A is able to ensure that B acts how A wishes B to conduct its affairs.

B controls 100% of the voting rights exercisable in the general meetings of body corporate C.

C is a member of a limited liability partnership of which bodies corporate D and E are also members.

D controls the majority of the voting rights in the limited liability partnership.

Due to these connections and subsection (6), A, B, C, D and E are associated under this section.

Under this section, if any of A, B, C, D, or E have a claim brought against them which is the result of a relevant liability being incurred, then the High Court may apply a building liability order to any or all of the others, if the claimants request it and if the High Court considers it just

Section 132: Order for information in connection with building liability order

Effect

1088 This section gives the Secretary of State a power to allow the High Court to order a specified body corporate to share information about their associated companies. It allows for prescribed persons to petition the High Court to request such an information order. This section also allows the Secretary of State, by regulations, to prescribe the description of persons who can apply to the court for such an order.

1089 Subsection (1) provides that prescribed persons may apply to the High Court for an information order. It allows for the Secretary of State, by regulations, to prescribe the description of persons who can apply to the court for such an order.

1090 Subsection (2) defines what an information order is. It provides that an information order is an order which once granted will require a specified body corporate to give, in a specified time defined by the courts, information or documents related to persons who are or have been associates of that body corporate.

1091 Subsection (3) defines the circumstances in which the High Court can grant an information order. It provides that information orders may only be granted if it appears to the court that the body corporate is subject to a relevant liability as defined by subsection (3) of section 130. Relevant liabilities include liabilities under the Defective Premises Act 1972, section 38 of the Building Act 1984, or liabilities which are incurred as a result of a building safety risk. A building safety risk is a risk to the safety of people in or about a building arising from the

spread of fire or structural failure. The court must also be convinced that the information and documents to be provided support the applicant in making or considering whether to make an application for a building liability order as defined in section 130.

1092 Subsection (4) sets out that prescribed means prescribed in regulations made by the Secretary of State and specified means specified in the information order.

1093 This section should be considered in conjunction with sections 130 and 131. Section 130 defines relevant liability for the purposes of this section. Section 131 defines the circumstances in which a body corporate can be considered associated with another body corporate for the purposes of this section. This section supports those who wish to be granted a building liability order under section 130.

Background

1094 This is a new provision.

1095 This section has been created to prevent companies using more complex and opaque structures to prevent a building owner, landlord or leaseholder from being able to prove how companies are associated and therefore undermine the intended outcome of building liability orders as defined in section 130. Information orders provide a route for persons to obtain information in order to support them applying for a building liability order and to support them in receiving adequate recompense to correct building safety defects.

Proposed use of power

1096 This section allows for the Secretary of State, by regulations, to prescribe the description of persons who can apply to the court for an information order. We intend to create regulations to define these persons.

Example

A 14 storey residential building is developed by body corporate A. A few years after it is completed, it is discovered that there are serious fire compartmentation issues within the building and the local fire and rescue authority orders the building to be evacuated until the risk from fire is reduced. To seek recompense for the remediation costs, a leaseholder within the building speaks to lawyers about whether they can make a civil claim. The lawyers advise the leaseholder that they can make a claim under the Defective Premises Act as the building is unfit for habitation.

The leaseholder discovers the development company was dissolved once the building was completed and the freehold sold off. The leaseholder suspects that the development company's parent company is associated, therefore, they wish to be able to apply for a building liability order in order to seek damages from the parent company. However, the leaseholder is unable to show that the parent company is associated to the degree needed to be granted a building liability order.

The leaseholder applies to the High Court for an information order to be applied to the parent company. The leaseholder must show that they intend to seek damages under a relevant liability (in this instance the Defective Premises Act) and that the information order could support them in applying for a building liability order.

In this example, the request for an information order is granted. The High Court places an information order on the parent company, and they are then required to share with the leaseholder details of all companies which were associated with them during a time period specified by the courts. The leaseholder now has the information required to show that the parent company is associated with the development company, as the parent company directly controlled the actions of the development company.

The leaseholder is then able to apply for a building liability order, to support them in making a claim under the Defective Premises Act against the parent company.

Remediation and redress: other provisions

Section 133: Service charges in respect of remediation works

Effect

1097 This section amends the existing section 20 consultation process in the Landlord and Tenant Act 1985. Subsection 133(4) inserts new section 120D Landlord and Tenant Act 1985, which sets out additional steps the landlord must undertake when embarking on defined remediation works.

1098 Subsection (2) of new section 20D Landlord and Tenant Act 1985 provides that, for specified remediation works, the landlord must take reasonable steps to seek other cost recovery avenues before passing on the costs to leaseholders and must inform the leaseholders about what those steps were. The landlord must:

- ascertain whether any grant is payable in respect of the remediation works and, if so, to obtain the grant;
- ascertain whether all or any of the cost of remediation works may be met by a third party and, if so, to obtain monies from the third party (which is defined as including monies obtained from insurance, guarantee or indemnity or from the developer or anyone involved in designing or carrying out works on the building); and
- ascertain whether any other prescribed kind of funding is available and to obtain such funding.

1099 Subsection (8) of new section 20D Landlord and Tenant Act 1985 clarifies that the landlord is not required to comply with their duty to seek cost recovery avenues (subsection (2)) before carrying remediation works.

1100 Subsection (4) of new section 20D Landlord and Tenant Act 1985 provides that, where funding is obtained, the landlord must reduce the remediation costs passed on to leaseholders accordingly.

1101 If the landlord does not comply with the above steps, subsection (5) of new section 20D Landlord and Tenant Act 1985 provides that a tenant can make an application for an order that all or any of the remediation costs are not regarded as relevant costs and therefore should not be taken into account when determining the service charge payable by the tenant or anyone else specified in the application.

1102 Subsection (9) of new section 20D Landlord and Tenant Act 1985 provides a power for the Secretary of State to issue guidance in relation to the steps set out in subsection (2).

1103 Subsection (10) of new section 20D Landlord and Tenant Act 1985 provides that failure to follow guidance may be relied upon as tending to establish proof of failure to comply with the requirements in subsection (2), and conversely proof of following the guidance can be taken to establish that there was no such failure.

1104 Subsection (11) of new section 20D Landlord and Tenant Act 1985 provides for definitions of key terms ("developer", "prescribed", "remediation costs" and "third party").

1105 Subsection 133(4) also inserts new section 20E Landlord and Tenant Act 1985. New section 20Esets out the procedures for regulations made under new section 20D, notably that these regulations will be made using the negative procedure.

1106 Proposed use of Powers

1107 The Secretary of State will have the power to prescribe reasonable steps that a landlord must take and to set out how a landlord might demonstrate that they have met this requirement in statutory guidance.

1108 The Secretary of State will have the power to prescribe additional alternative sources of funding that the landlord must explore in regulations.

1109 The Secretary of State will be able to specify in regulations the information that the landlord must provide to the leaseholders about what steps they have taken, and the reasons for their course of action. This will enable leaseholders to be provided with accurate, up to date information and will enable them to make informed choices and to challenge when they feel their landlord has not taken reasonable steps.

Background

1110 There is currently no legal obligation on the landlord to seek alternative forms of cost recovery for remediation works before passing these costs onto leaseholders. This clause amends section 20 in the Landlord and Tenant Act 1985 so that the landlord has new duties to take reasonable steps to seek other cost recovery avenues before passing on remediation costs to leaseholders.

1111 This change to the law is being made to give leaseholders further rights and protection by ensuring other cost recovery routes are appropriately explored.

Example

A leaseholder is given a service charge bill for a large amount of money for remediation works. The leaseholder challenges the validity of the service charge at the First-tier tribunal, because they do not feel the landlord has taken reasonable steps to explore other forms of cost recovery. It transpires that the landlord has not made a claim against a warranty and the claim of the leaseholder is upheld by the First-tier Tribunal. The landlord must take reasonable steps to seek cost recovery via this route, before passing any costs on to the leaseholder.

Section 134: Duties relating to work to dwellings

Effect

1112 Subsection (1) of this section amends the Defective Premises Act 1972 by inserting new section 2A into that Act.

1113 New section 2A(1) sets out that this section applies where a person takes on work in relation to any part of a relevant building in the course of a business. It does not apply, for example, to homeowners doing work on their own properties.

1114 New section 2A(2) defines a "relevant building" as a building consisting of or containing one or more dwellings (e.g. a house or a block of flats).

1115 New section 2A(3) sets out that the person who takes on work to a relevant building owes a duty to the person for whom the work is done and any person who holds or subsequently acquires a legal or equitable interest in a dwelling in the building (this includes homeowners and leaseholders). The duty applies to work done directly to a dwelling, and to work done to other parts of a building (such as to the communal parts of a block of flats). This section sets out that the person undertaking the work owes a duty to ensure that, as regards the work, the dwellings in the building are fit for habitation when the work is completed. This test is also used in section 1 of the Act (in relation to the original provision of a dwelling). The phrase "as regards the work" means that the person is responsible only for their own work and not any existing defects in the building (although the person will be responsible for their own work in relation to any defects which are within the agreed scope of the work).

1116 New section 2A(4) sets out that new section 2A(3) does not apply where the existing section 1 duty applies (i.e. where work is taken on in connection with the "provision" of a dwelling), or where it is expected that the dwelling will cease to be a dwelling on the completion of the work (e.g. converting flats into offices) or if the dwelling will have otherwise ceased to exist (e.g. demolition of a house).

1117 New section 2A(5) sets out that, where a person (A) takes on work for another person (B), and it is agreed that the work will be done in accordance with instructions provided by or on behalf of B, then if A does that work properly and in accordance with those instructions, then A will have discharged the duty and no claim would be able to be brought. There is an exception where there are defects in the instructions provided by B. In this case, if A has a professional duty to inform B that the instructions are defective but fails to do so, and carries out work in accordance with the defective instructions, then A fails to discharge their duty to B.

1118 New section 2A(6) makes clear that, for the purposes of new section 2A(5), the person commissioning the work is not treated as having given instructions just because they have agreed with the person doing the work that the work will be completed in a specified way.

1119 New section 2A(7) sets out that, if a person doing work to a relevant building arranges for another person to take on that work (e.g. subcontracting part of a project) then those persons (i.e. the subcontractors) also owe a duty for the work they take on.

1120 New section 2A(8) relates to the limitation period in respect of a breach of a duty imposed by new section 2A, as set out in the Limitation Act 1980, as amended by section 135. This section sets out that the 15-year limitation period starts when the work is completed. As with a time limit under section 1, if a person subsequently does work to rectify original defective work, the 15-year limitation period starts again when that further work is finished.

1121 Subsection (2) of this section makes clear that new section 2A will apply only to work completed after this section comes into force.

Effect in Wales

1122 This section will apply equally in Wales.

Background

1123 This section amends the Defective Premises Act 1972.

1124 The Defective Premises Act 1972 creates a right to claim compensation in the civil courts for defective work connected with the provision of a dwelling, where the work renders the dwelling not "fit for habitation". The Defective Premises Act currently extends to the "provision" of a dwelling, meaning construction (i.e. new builds) or conversion (e.g. offices into flats). In practice, the claimant will need to show that the work made the dwelling not fit for habitation, and it is up to a court to decide based on the facts of the specific case.

1125 The Defective Premises Act does not currently extend to work undertaken on a dwelling beyond its initial "provision", meaning that work undertaken on existing buildings that has made the dwelling not fit for habitation does not fall within scope of the Act, even for highly complex, major works. This section expands the right to claim compensation to any work undertaken on a dwelling, provided that work is done in the course of a business.

> Example
> Work to refurbish an existing block of flats is done by a contractor. As a result of that work, one or more of the flats are no longer fit for habitation. This would constitute a breach of the duty under new section 2A of the Defective Premises Act 1972 and leaseholders of the affected flats would be able to bring a claim through the civil courts against the contractor for the cost of rectifying the defective work.

Section 135: Limitation periods

Effect

1126 This section makes a number of changes to extend the limitation periods (i.e. the period within which legal action must be brought) in respect of action under section 1 of the Defective Premises Act 1972, (the yet to be commenced) section 38 of the Building Act 1984, and new section 2A of the Defective Premises Act 1972 (see section 134). The changes to limitation periods are achieved primarily by inserting new section 4B into the Limitation Act 1980 (subsection (1)). The Limitation Act currently provides that the limitation period with respect to these causes of action is six years.

1127 This section extends the limitation period under section 1 of the Defective Premises Act (relating to the "provision" of a dwelling) to 30 years retrospectively and 15 years prospectively. This means that relevant work completed prior to the commencement of this section will be subject to a 30-year limitation period, and work completed after commencement will be subject to a 15-year limitation period.

1128 This section also provides for 15-year limitation periods under section 38 of the Building Act and new section 2A of the Defective Premises Act. These changes will apply prospectively only.

1129 This section provides in subsection (4) that, in respect of section 1 of the Defective Premises Act, where a revived limitation period would last for less than one year (known as "the initial period"), it will instead last for one full year, in order to give potential claimants the necessary time to take advice and lodge a claim.

1130 Where a limitation period is extended retrospectively this section sets out two safeguards to ensure fairness in the proceedings. First, subsection (5) provides that, where a claim is lodged and the continuation of the claim would breach a defendant's human rights, the court must dismiss the claim. Secondly, subsection (6) provides that, where a claim has previously been dismissed or otherwise concluded (for example, if settled), the extended limitation period will not, of itself, be sufficient to reopen the claim.

Effect in Wales

1131 This section will apply equally in Wales.

Background

1132 This section is a new provision. To complement the redress provisions for newly built homes that are being introduced through the Act, the Government wishes to go further and extend redress provisions for existing buildings.

Example 1: Extended limitation period

Work on a new build block of flats is completed in 2024 and, seven years later, the leaseholders of a flat in that block find that, during the building work, there was a breach of a requirement imposed by the building regulations. Under section 38 of the Building Act 1984 the leaseholders can lodge proceedings to have their claim heard by the court within 15 years of the completion of the work.

Example 2: "Revived" limitation period

Work on a new build block of flats was completed in 2000 and in 2019 leaseholders discovered that there were defects in the original work to the extent that the flat is unfit for habitation, potentially giving rise to a cause of action against the housebuilder under section 1 of the Defective Premises Act 1972. However, the limitation period had already expired in 2006, so no claim was brought. Due to the retrospective extension of the limitation period to 30 years, the leaseholders could now bring proceedings up until 2030.

New Homes Ombudsman scheme

Section 136: Establishment of the New Homes Ombudsman scheme

Effect

1133 This section requires the Secretary of State to arrange for there to be a redress scheme for England, Scotland, Wales and Northern Ireland, to be known as the "New Homes Ombudsman scheme", which must meet the conditions in section 137(1), including the requirements set out in Schedule 9.

1134 The provision gives examples of how the obligation in subsection (1) might be achieved. The scheme may be an external or "in-house" redress scheme. For example, the Secretary of State could either select a third party to establish the scheme and maintain it, or the scheme could be an "in-house" arrangement whereby the Secretary of State establishes and maintains the scheme directly or establishes the scheme and appoints another person to maintain it. This will provide flexibility for how the scheme is established and maintained, and who will deliver the New Homes Ombudsman scheme. For completeness, the examples set out in the provision also cover the Secretary of State having to make arrangements for transfer, to allow the scheme to be maintained by a different person to the person who established it. This might become necessary if the external scheme provider which established the scheme could no longer fulfil its contract.

1135 In line with the flexibility around how the scheme is established and maintained, this section also provides for flexibility in terms of funding the scheme. It 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). 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. The intention is for the New Homes Ombudsman scheme to cover its own costs and to finance itself through fees charged to developers.

1136 Before making the arrangements for the New Homes Ombudsman scheme under this section, the Secretary of State must consult the Welsh Ministers and Scottish Ministers and the relevant Northern Ireland department. If in future, alternative arrangements are required for the New Homes Ombudsman Scheme, the Secretary of State will be required to consult with the Scottish and Welsh Ministers and the relevant Northern Ireland department again.

1137 The relevant Northern Ireland department is the department of the Northern Ireland Executive designated by the First Minister and deputy First Minister in Northern Ireland acting jointly, or the Executive Office in Northern Ireland, where a department has not been designated.

Background

1138 This is a new provision. There is no previous provision for owners of new build homes specifically to complain to an ombudsman or redress scheme. Redress schemes already exist in relation to management, lettings and estate agency work in the private residential sector, and for social housing residents.

Example

The Secretary of State may make arrangements with a third party to establish a scheme and maintain it by way of a government procurement. There may already be a voluntary scheme in place that could bid, alongside other potential providers.

It is anticipated that an independent board incorporating the housebuilding industry, consumer groups and others will bring forward arrangements to set up such a voluntary scheme prior to Royal Assent.

Where no suitable providers of a scheme come forward, the Government may establish a scheme itself and ask someone else to maintain the scheme. If necessary, the Government could make a loan to establish a scheme which could be recouped once fees have been received under the scheme.

Before making arrangements for the scheme the Secretary of State will consult with the Scottish and Welsh Ministers, and the relevant Northern Ireland department, and intends to work with the devolved administrations as the policy is developed.

Section 137: The New Homes Ombudsman scheme

Effect

1139 The scheme must meet the conditions set out in this section and in Schedule 9.

1140 The purpose of the New Homes Ombudsman scheme is to enable relevant owners of new build homes across the United Kingdom to make complaints against scheme members (developers) and to have such complaints investigated and determined by an individual who will act as an independent ombudsman.

1141 Membership of the scheme must be open to all developers. The scheme must manage complaints made by qualifying complainants about those members. The definition of "qualifying complainant" covers a person who is a "relevant owner" of a "new build home" in England, Scotland, Wales or Northern Ireland at the time of a complaint, which is a complaint within the first two years from the first purchase of the property from the developer. "Relevant owner" and "new build home" are defined in section 138. "Relevant owners" include individual owners who occupy the new build home, and certain residential landlords. Complaints can be made for certain new build homes constructed or converted after this section comes into effect, subject to further conditions in section 138.

1142 This section does not restrict the New Homes Ombudsman scheme from receiving complaints from "qualifying complainants" only. It may include provision for other people or organisations to have complaints investigated.

1143 To avoid duplication, the scheme will not be required to investigate a similar complaint being dealt with under another redress scheme, such as complaints against a developer who is a member of another redress scheme.

1144 This could include a situation where a complaint has been made to the Housing Ombudsman Service for a new build home in England which has not been resolved yet. The New Homes Ombudsman scheme will also not be required to investigate complaints that are subject to legal proceedings. The same applies to complaints already resolved by other redress schemes or the courts.

1145 This section also introduces Schedule 10 which inserts reference to the New Homes Ombudsman into the Local Government Act 1974 and the Housing Act 1996 to make sure that the Local Government and Social Care Ombudsman and the Housing Ombudsman can work effectively together with the New Homes Ombudsman.

1146 In this section, the term "redress scheme" is to include schemes that involve statutory corporations , amongst others, such as the Public Services Ombudsmen available in Wales Scotland and Northern Ireland, the Local Government and Social Care Ombudsman and the Housing Ombudsman.

Background

1147 This is a new provision. There is no previous provision for owners of new build homes specifically to complain to an ombudsman or redress scheme. Redress schemes already exist in relation to property management, lettings and estate agency work in the private residential sector, and for social housing residents.

Example

An individual who owns and occupies a new build home will be able to bring a complaint against a developer who is a member 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 first purchased from the developer. A complaint does not have to be made by the original purchaser, if the home has changed hands – see further below at section 138. 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). It will be up to the New Homes Ombudsman scheme to set out who can complain to it in these circumstances. This could include prospective purchasers of new build homes who did not complete the purchase of the property as a result of a developer's actions, or it could include organisations such as smaller housing associations who bought new build homes for occupation by tenants.

Section 138: "Relevant owner", "new build home" and "developer"

Effect

1148 This section defines the key concepts used in sections 136 and 137: who is a relevant owner, what is a new build home, and what is a relevant interest in land. This section also defines who is a developer, the category used to establish who may become a member of the New Homes Ombudsman scheme.

1149 This section also allows the relevant national authority to set out, in regulations, an additional category of persons (for example by reference to their connection with a "developer" as defined in the first part of this section), so that anyone of such a description is also a "developer" for the purpose of the legislation.

1150 This section also provides a description of who the relevant national authority is in relation to homes in England, Scotland, Wales and Northern Ireland.

Proposed use of this power

1151 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 intended to be members of the New Homes Ombudsman scheme, regulations can provide additional provisions to supplement the definition under this section, for example by adding companies connected to those fitting the definition of developer to the "developer" category in subsection 6(a).

1152 Before making regulations under this section, the intention is that the relevant national authority bringing forward regulations is to consult each of the other relevant national authorities listed in subsection (7A). This will make sure that the other "relevant national authorities" are provided with an opportunity to engage on the regulations and to consider bringing forward similar regulations in relation to their respective countries.

1153 Section 139 sets out how these regulation-making powers are exercisable in relation to England, Scotland, Wales and Northern Ireland.

1154 The relevant national authorities are the Secretary of State, the Welsh and Scottish Ministers, and the department of the Northern Ireland Executive designated by the First Minister and deputy First Minister in Northern Ireland, acting jointly.

1155 If a department has not been designated as "the relevant national authority" for the purposes of section 139, the relevant national authorities, for homes in England, Wales and Scotland, must consult with the Executive Office in Northern Ireland before making regulations.

Background

1156 This is a new provision.

Example: Review the definition of a developer

The Welsh Ministers 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 has emerged). This provides flexibility to ensure those who are intended to be members of the New Homes Ombudsman should be.

If the Welsh Ministers identify an additional category of persons who they consider should be included in the category of developer in Wales, before regulations are made, the Welsh Ministers must consult with both the Secretary of State and Scottish Ministers, and the designated Northern Ireland department before bringing forward regulations.

If the relevant national authority chooses to make regulations, the respective procedure for the relevant national authority will be set out in section 139. For example, in England, the relevant national authority is the Secretary of State and if the Secretary of State decides to make such regulations, and the consultation requirements are met, a draft of the regulations will be subject to approval by each House of Parliament.

Section 139: Regulations under section 138

Effect

1157 This section provides for the parliamentary procedure and other matters connected to the power to make regulations under section 138(6)(b) to add to the description of who is a developer.

Proposed use of the power

1158 It is envisaged that the definition of developer in section 138 will capture those persons who Government intends to become members of the redress scheme. However, it is acknowledged that developers use a variety of corporate structures and vehicles, and this will be kept under review.

1159 The relevant national authorities for homes in England, Scotland, Wales and Northern Ireland may have specific policy priorities or identify specific issues in relation to those respective countries. The power within section 138(6)(b) has therefore been granted to the Welsh and Scottish Ministers, and a designated Northern Ireland department as well as the Secretary of State.

1160 This section sets out that regulations made for this purpose must be made by statutory instrument using the affirmative procedure within the UK Parliament, the Senedd Cymru and the Scottish Parliament, and by statutory rule using the affirmative procedure within the Northern Ireland Assembly. This section further sets out that those regulations may make different provision for different purposes or may contain consequential, supplementary, incidental, transitional or saving provision in relation to regulations regarding an additional description of a developer. For example, there may be circumstances in future where the legislation does not work as intended in the context of a new person described as a developer without some further consequential or supplementary provision.

1161 Other circumstances may arise where transitional or saving provision are required, such as where regulations are made by the national relevant authority to add a description of a developer and those now included within that definition need time to become members of the new homes ombudsman scheme. Likewise, there may be some circumstances where exceptions should be made in relation to a new additional description of developer set out in the regulations.

Background

1162 This is a new provision.

Section 140: Power to require persons to join scheme and provide information

Effect

1163 This section creates a power for the Secretary of State to make regulations which will require developers of new build homes, who are 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 certain publicity requirements for members of the scheme, requiring developers to provide information about the scheme, which may include requiring developers of new build homes to obtain a certificate to prove or advertise their membership. The regulations may require scheme members to inform certain persons, such as purchasers of new build homes, that the New Homes Ombudsman scheme exists.

1164 In such regulations the Secretary of State may set out the framework for enforcement including: the investigation of suspected breaches in relation to these duties, conferring functions on a person in relation to sanctions and investigations, types of sanctions for failing to comply, and the right to appeal the sanctions. This section also provides the Secretary of State with a power to make payments to any person on whom the regulations confer enforcement functions. Any person on whom the regulations confer enforcement functions may be required to have regard to statutory guidance concerning the exercise of those functions.

1165 There are differences in law, custom and practice across the United Kingdom and the regulations will need to accommodate these differences, particularly in relation to any enforcement framework and civil sanctions. To make sure that the regulations take into account the differences across the United Kingdom, before making regulations under this section, the Secretary of State must consult the Welsh and Scottish Ministers, and the relevant Northern Ireland department.

1166 The relevant Northern Ireland department is the department of the Northern Ireland Executive designated by the First Minister and deputy First Minister in Northern Ireland acting jointly, or the Executive Office in Northern Ireland, where a department has not been designated.

Proposed use of power

1167 It is intended that when a New Homes Ombudsman scheme is available and developers are aware of the new requirements, affirmative procedure regulations will be laid which, once approved by both houses of Parliament, will require developers to belong to the New Homes Ombudsman scheme, and publicise their membership of the same. It is also intended that the regulations will set out how those provisions are to be enforced. The Regulations may provide exceptions to the requirement to be a member.

1168 Consultation is necessary so that the scheme can work as intended across the United Kingdom by ensuring that differences in law, custom and practice, are considered, particularly where judicial systems differ.

Background

1169 This is a new provision.

1170 There is presently no statutory obligation upon developers of new build homes specifically to belong to a redress scheme, nor a way to enforce the requirements. This represents a significant gap for purchasers of new build homes.

Example

The UK Government will work with the Scottish, Welsh and Northern Irish administrations so that the regulations are operable in England, Scotland, Wales and Northern Ireland. For example, this would take into account the different legal regimes in different territories.

The Government's intention is for consultation with the Scottish and Welsh Ministers, and the relevant Northern Ireland department, to be conducted at an early stage and before decisions have been taken. This may include a UK Government and devolved administration working group to facilitate joint working between these authorities.

Once the regulations have been approved, developers of new build homes within scope 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 scheme's 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).

This section provides for regulations to be laid regarding the enforcement of any duties introduced by this section. Developers that breach requirements may face civil sanctions. The regulations must allow for a right of appeal against such sanctions.

In addition, this section allows the Secretary of State to designate the person to impose the sanctions or investigate suspected breaches of requirements. This could, for example, allow a new or existing body to undertake the enforcement role, and this section 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 and new regulatory environment.

When the Secretary of State chooses to make regulations, a draft of the regulations would be subject to approval by each House of Parliament.

Section 141: Register of members

Effect

1171 This section places a requirement on the person who maintains the scheme to keep and publish a register of the scheme's members that can be inspected by the public at all reasonable times. This will mean that consumers can check if a developer is a member of the New Homes Ombudsman scheme.

Background

1172 This is a new provision.

Section 142: Developers' code of practice

Effect

1173 This section allows the Secretary of State to give approval to a code of practice that covers the standards of conduct and standards of quality of work which should be met by members of the New Homes Ombudsman scheme. Alternatively, if the industry or others do not come forward, this section allows the Secretary of State to issue a code.

1174 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 Schedule 9, 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, whatever the issue, the scheme must have regard to any code of practice that has been issued or approved.

1175 The Secretary of State must consult the Scottish and Welsh Ministers, and the relevant Northern Ireland department, before issuing, revising or replacing the code of practice; or before approving the code or its revision or replacement. This is designed to ensure that the Code of Practice takes into account the views of the devolved administrations, in order to take into account their policy priorities and to reflect differences in law, custom and practice between Scotland, Wales, Northern Ireland and England.

1176 The relevant Northern Ireland department is the department within the Northern Ireland Executive designated by the First Minister and deputy First Minister in Northern Ireland acting jointly, or the Executive Office in Northern Ireland, where a department has not been designated in this way.

Proposed use of power

1177 The Secretary of State is not required by this section 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.

Background

1178 This is a new provision.

Example

A code of practice may be used by developers (who are members of the New Homes Ombudsman scheme) and the purchasers of new homes so that all parties are aware of the standards 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 in relation to the standards of conduct and standards of quality of work expected of developers during the construction process.

It is expected that, if a code of practice is issued or approved by the Secretary of State, the New Homes Ombudsman Scheme will require its members to follow it and will consider compliance with the code when investigating complaints.

The Code can be changed over time. The Secretary of State may, following consultation with the Scottish and Welsh Ministers, and the relevant Northern Ireland department, revise or replace a code of practice to reflect changing circumstances and practice or approve its revision or replacement.

To enable purchasers and developers to be aware of the code of practice and expected standards, the Secretary of State will ensure it is published and could publish it on the Government's website or signpost to where the code of practice is published Any code could also require developers to make prospective purchasers aware of the code during the sales process.

Section 143: Amendment of the Government of Wales Act 2006

Effect

1179 This section modifies Senedd Cymru's legislative competence by removing the need for the consent of the UK Secretary of State to a provision of an Act of Senedd Cymru which removes or modifies any function of the new homes ombudsman or which confers power to do so.

Background

1180 This is a new provision. This section lists the New Homes Ombudsman in sub-paragraph 10(2) to Schedule 7B to the Government of Wales Act 2006, so that the Senedd is not restricted from bringing forward legislation to remove or modify the New Homes Ombudsman's statutory function in relation to Wales in future. Housing is devolved to the Senedd, the Scottish Parliament and the Northern Ireland Assembly, and in the future those bodies may decide to pursue alternative arrangements regarding redress for new build homebuyers which may necessitate changes to the New Homes Ombudsman's functions as regards those countries.

Section 144: New build home warranties

Effect

1181 This section sets a legal requirement for the developer of every new build home to provide a warranty for the benefit of a purchaser (subsections (2) and (3). The warranty must meet minimum standards, which will be set in regulations. The warranty must be for a minimum term of no less than 15 years (subsection (5)).

Background

1182 At present, 10-year warranties are provided on new homes as a requirement to obtain mortgage finance rather than as a legal requirement. As part of the Act's general aim of improving the safety and standards of buildings, this section mandates provision of such warranties in law, extends the minimum term from 10 to 15 years (subsection 5) and also provides powers for the Secretary of State to set a range of minimum requirements in regulations (subsection (4)).

1183 The minimum warranty term of 15 years mirrors the extended limitation period to bring litigation under section 1 of the Defective Premises Act 1972 and section 38 of the Building Act 1984, set by section 144 of this Act.

Proposed use of power

1184 The Government intends to consult widely on the proposed minimum standards to be set in regulations made under this section. It intends to delay commencement of this section to allow industry the opportunity to consider the outcome of that consultation and make appropriate warranties available for sale.

Example 1

Once this provision comes into effect, it will be unlawful for a developer of a new build home (whether a house, flat, maisonette or other type) to sell it without providing a warranty covering at least the prescribed minimum standards for at least the minimum term. Where the new home is a flat in a block with common parts, those parts would also need to be covered by a warranty (subsection (2)(b)).

Example 2

If a new build home were to be sold, after commencement of this section, without a warranty, enforcement action could be taken against the developer under regulations made under the following section.

Section 145: New build home warranties: financial penalties

Effect

1185 This section enables the Secretary of State to set out in regulations i) the level of financial penalties that could be issued to developers selling new build homes without a compliant warranty in breach of section 144, including provision for interest or additional penalties for late payment and ii) the process for considering and issuing such penalties and the right to appeal.

Background

1186 At present, 10-year warranties are provided on new build homes as a requirement to obtain mortgage finance rather than as a legal requirement. There is therefore no provision at present to mandate warranties in law or to impose penalties for selling a new build home without a warranty.

1187 In order to deter developers from considering selling new homes without a compliant warranty, subsection (1) enables the Secretary of State, or a person designated by them, to issue financial penalties for doing so in the absence of a reasonable excuse. Subsection (2) provides that the level of penalties, the process for issuing them, provision for interest or additional penalties for late payment and conferring rights of appeal will be set in regulations; subsection (3) provides that the maximum penalty prescribed in regulations may not exceed £10,000 or 10% of the sale price of the new home, whichever is the greater.

Example

If a new home were built and then sold for £250,000 without a warranty, and the developer had no reasonable excuse for not providing a warranty, the Secretary of State (or person designated by them) could issue the seller with a financial penalty of up to £25,000, or such lower maximum as may be prescribed in regulations.

Construction products

Section 146: Construction products

Effect

1188 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, via the European Union (Withdrawal) Act 2018. The enforcement regime in the UK is governed by the Construction Product Regulations 2013. Both sets of regulations were amended for the UK by the Construction Products (Amendment etc.) (EU Exit) Regulations 2019.

1189 They were further amended by the Construction Products (Amendment etc.) (EU Exit) Regulations 2020, implementing the Northern Ireland Protocol for construction products by enabling the continued application of the EU Construction Products Regulation 2011 in Northern Ireland and implementation of the amended retained EU law in Great Britain.

1190 Currently this framework applies only to products with an EU harmonised standard or conforming to a European Technical Assessment (now, in the UK, a designated standard and a United Kingdom Technical Assessment). The Secretary of State has powers to add further products for the GB market. Certain other construction products where they are used by consumers may fall under the requirements of the General Product Safety Regulations 2005 for products to be safe. There are many construction products where there is no existing EU harmonised standard, or European Technical Assessment, and they are not used by consumers – Aluminium composite material (ACM) cladding being one example and some types of fire doors another. This gap in regulation became apparent after the Grenfell Tower Fire.

1191 It is intended that all construction products which are made available on the UK market should fall under a regulatory regime. The Building Safety Act does this in two ways, by taking powers to:

- Require construction products to be safe; and
- Create a statutory list of "safety critical" construction products.

1192 This is in addition to the current regulatory regime. The Act also creates powers enabling the Secretary of State to amend the current regime to ensure that it remains fit for purpose.

1193 This section gives the Secretary of State the power to regulate construction products.

1194 The power applies to the whole of the United Kingdom.

Proposed use of this power

1195 The power will be used to set out a detailed regime in regulations. The detail of the extent of the power is set out in Schedule 11.

1196 This power will be used by the Secretary of State to create regulations for the marketing and supply of construction products in the United Kingdom. The new regulations will work in three ways:

a) they will create a new requirement for construction products to meet a general safety requirement;

b) they will retain existing requirements for products which perform to a designated standard or products which conform to a technical assessment, adding some further requirements to enhance the existing market surveillance and enforcement regime, and provide for regulation of false statements made in advertising and marketing material; and

c) they will create new requirements for a list of safety critical products (where the failure of such products would result in death or serious injury).

Background

1197 The purpose of this power is to provide that construction products placed on the UK market are safe and, in the case of products subject to designated standards, 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
> The provisions of Schedule 11 set out the detail of how this power is intended to be used and includes examples of how the regulations are intended to work in practice.

Section 147: Liability relating to constructions products: general definitions

Effect

1198 This section sets out definitions that are relevant to the four subsequent sections, 148 to 151: Liability relating to construction products, Liability for past defaults relating to cladding products, Liability relating to construction products: limitation in England and Wales and Liability relating to construction products: limitation in Scotland.

1199 This section defines the construction product regulations that are relevant to sections 146 to 148. These are the Construction Products Regulations 1991 ("the 1991 Regulations"), Regulation (EU) No. 305/2011 ("the 2011 Regulation"), the Construction Products (Amendment etc.) (EU Exit) Regulations 2019 ("the 2019 Regulations") and the regulations made under schedule 11 of this Act ("the construction products regulations").

1200 This section defines a "relevant building" as a building which consists of a dwelling, or a building which contains two or more dwellings.

1201 A "relevant interest" in relation to a building is defined for England and Wales, and separately for Scotland. In England and Wales, a "relevant interest" is a legal or equitable interest in a building, or any dwelling contained in the building. In Scotland, a "relevant interest" is any right or interest in or over the building where it contains a dwelling or the building contains one or more dwellings, the building, or any dwelling contained within the building.

1202 This section applies equally in England and Wales and Scotland. Section 169(7) provides a power for sections 147 to 149 to be extended, by regulations, to Northern Ireland.

Background

1203 This is a new provision.

1204 Sections 147 and 148 each create a new cause of action which allows for manufacturers and sellers of construction products to be held accountable where the use of a construction product in construction works causes or contributes to a dwelling being unfit for habitation on completion of those works. This applies retrospectively (section 149) in relation to

construction products which are cladding products only, and where the relevant products are in breach of regulations, inherently defective, or have been mis-sold. Prospectively (section 148) it applies to all construction products, where the relevant product is in breach of regulations, inherently defective, or has been mis-sold. Sections 149 and 150 make provisions for limitation periods associated with the new causes of action. This section provides general definitions relevant to the new causes of action.

Section 148: Liability relating to construction products

Effect

1205 Section 148 makes provision for a new cause of action where a construction product used in construction works causes, or is a factor in causing, a dwelling to be unfit for habitation on completion of those works.

1206 Subsection (1) sets out that section 148 applies when Conditions A to D are met.

1207 Subsection (2) sets out Condition A. Condition A is that a person fails to comply with a construction product requirement (which is defined in section 147), or a person makes a misleading statement in relation to a construction product, or a person manufactures a construction product that is inherently defective. A "construction product requirement" is defined in section 147 as a requirement under either of the 2011 or 2019 regulations, or construction product regulations made under schedule 11 of this Act (defined in section 147).

1208 Subsection (3) sets out Condition B. Condition B is that the construction product referred to in subsection (2) is installed in, or applied, or attached to, a relevant building (as defined in section 147).

1209 Subsection (4) sets out Condition C. Condition C is that, when the works to the relevant building are completed, the relevant building, or a dwelling contained within the building, is unfit for habitation.

1210 Subsection (5) sets out Condition D. Condition D is that the facts referred to in subsection (2) were the cause, or one of the causes of the building or dwelling being unfit for habitation.

1211 If Conditions A to D are met, a claim for compensation can be brought through the civil courts. A claim can be brought by those who have a relevant interest in relation to the relevant building and have suffered a loss due to a dwelling being unfit for habitation.

1212 Subsection (6) sets out that loss can be claimed for personal injury, damage to property or economic loss.

1213 Subsection (7) provides that any attempt to contract out of any liability arising under this section is void.

1214 Subsection (8) sets out when the limitation period commences, and refers to the statutory provisions which apply separately for England and Wales, and Scotland. In relation to a building's initial construction, the limitation period commences when the building is completed. In relation to other works not connected with the initial construction of the building, the limitation period commences when those works are completed.

1215 Subsection (9) and (10) define "construction product" for the purposes of this section.

1216 Section 148 applies equally in England and Wales and Scotland. Section 169(7) provides a power for this section to be extended, by regulations, to Northern Ireland.

Background

1217 This is a new provision.

1218 There is evidence that the mis-selling of construction products and the supply of defective construction products have contributed to safety defects in buildings, particularly in multi-occupied residential buildings. When these defects come to light, their remediation can be costly.

1219 Currently, there is limited recourse against manufacturers of defective or inappropriately marketed construction products, or those in breach of construction product regulations. Often, the possibility of redress to recover costs from manufacturers is limited to a claim for breach of contract, where a contractual relationship exists. However, it will often be the case that there is no relevant contractual relationship in place; for example, the owner of a flat which has been affected by the installation of a defective construction product will not usually have a contractual relationship with the product manufacturer or seller, and so would be unable to use such a route to recover damages for remediation work that is needed.

1220 In England and Wales, the Defective Premises Act 1972 creates a right to claim compensation in the civil courts for defective work connected with the provision of a dwelling, where the work renders the dwelling not "fit for habitation". Section 134 of this Act expands the scope of the Defective Premises Act to work done to a dwelling beyond its initial completion. However, the duty under the Defective Premises Act only extends to persons taking on work in relation to the dwelling. The duty does not extend to the role that manufacturers or sellers of construction products might play in a building or dwelling being unfit for habitation on completion of the relevant works.

1221 The new cause of action created by this section will enable claims to be brought against construction product manufacturers and sellers for their role in dwellings being unfit for habitation on completion of the relevant works: if a construction product contributes to or causes a dwelling to be "unfit for habitation" on completion of the relevant works and an individual with a relevant interest incurs a loss as a consequence, then a civil claim can be brought through the courts to recover damages for that loss.

1222 Damages that can be recovered under this section can include personal injury, damage to property, for example caused by a fire; or economic loss, which could include the costs of remediation.

1223 This section will apply prospectively, meaning that it will apply to work completed after the commencement of this section, which is two months after Royal Assent (section 170(3)(e)). The limitation period for claims brought under this section is 15 years from when the cause of action accrues.

1224 The "fit for habitation" test is intended to be equivalent to the test used in the Defective Premises Act 1972 which applies to England and Wales. The Defective Premises Act does not extend to Scotland, but the phrase has a generally understood meaning, which could be used by the Courts in Scotland, together with using the principles in caselaw under the Defective Premises Act as guidance. The same principles could apply should the provisions be extended to Northern Ireland using the power at section 169(7).

Example

A construction product manufacturer makes a statement in marketing materials that a particular product is suitable for use in the construction of high-rise residential buildings. The statement is not true, and the performance of this product meant it was not suitable for such use.

The manufacturer sells this product directly to a contractor who is constructing a high-rise residential building. The contractor relies on the information in the marketing material that the product is suitable for the specific construction project and uses it in that construction project.

On completion of the works, the dwellings in the building are not fit for habitation and to make them fit for habitation costly remediation works would be required.

The leaseholders, who would have to pay for the remediation works, would be able to bring a claim for damages against the manufacturer under this cause of action.

Section 149: Liability for past defaults relating to cladding products

Effect

1225 Section 149 makes provision for a new cause of action where a cladding product used in construction works cause, or is a factor in causing, a dwelling being unfit for habitation, following completion of certain works.

1226 Subsection (1) sets out that this section applies when Conditions A to D are met.

1227 Subsection (2) sets out Condition A. Condition A is that a person fails to comply with a cladding product requirement (which is defined in subsection (12)), or a person makes a misleading statement in relation to a cladding product, or a person manufactures a cladding product that is inherently defective. A "cladding product" is defined in subsection (11) of this section.

1228 Subsection (3) sets out Condition B. Condition B is that the cladding product is attached to, or included in, the external wall of a relevant building (as defined in section 147) in the course of works to that building.

1229 Subsection (4) sets out Condition C. Condition C is that, when the works to install the cladding product in the relevant building are completed the relevant building, or a dwelling contained within the building, is unfit for habitation.

1230 Subsection (5) sets out Condition D. Condition D is that the facts referred to in subsection (2) were the cause, or one of the causes, of a dwelling, or dwellings, being unfit for habitation.

1231 If Conditions A to D are met, a claim for compensation can be brought through the civil courts. A claim can be brought by those who have a relevant interest in relation to the relevant building and have suffered a loss due to a dwelling being unfit for habitation.

1232 Subsection (6) sets out that loss can be claimed for personal injury, damage to property or economic loss.

1233 Subsection (7) provides that any attempt to contract out of liability under this section is void.

1234 Subsection (8) sets out when the limitation period commences and refers to the statutory provisions which apply separately for England and Wales, and Scotland. In relation to a building's initial construction, the limitation period commences when the building is completed. In relation to other works not connected with the initial construction of the building, the limitation period commences when the works are completed.

1235 Subsections (9) and (10) set out a safeguard to ensure fairness in proceedings. They provide that where a claim is brought and the continuation of the claim would breach a defendant's Convention rights, the court must dismiss the claim. The "Convention rights" are defined in subsection (12) as having the same meaning as in the Human Rights Act 1998.

1236 Subsection (11) provides a definition for "cladding product requirement" in relation to the relevant regulations in force at the time. Subsection (12) defines a "cladding product" and makes clear that the term "external wall" includes parts of the roof in certain cases.

1237 Section 149 applies equally in England and Wales and Scotland. Section 169(7) provides a power for the provisions to be extended, by regulations, to Northern Ireland.

Background

1238 This is a new provision.

1239 Current issues with historical fire safety defects in multi-occupied residential buildings are an unprecedented situation affecting large numbers of leaseholders.

1240 There are particular problems with the past use of unsafe cladding products on these buildings, and the resultant fire safety risks. Often, to mitigate against the fire safety risks, the cladding needs to be remediated. The costs associated with remediation are often significant.

1241 There is evidence that the past actions of manufacturers and sellers of cladding products have contributed to the creation of these defects and the resultant fire safety risks.

1242 Where the actions of cladding product manufacturers and sellers have caused or contributed to a building being unsafe, there are limited existing routes to secure redress from those at fault.

1243 The cause of action created by this section provides a new route for recourse against cladding product manufacturers, where their actions have caused or contributed to a dwelling becoming unfit for habitation.

1244 The cause of action has retrospective effect. This means that it is available in respect of defaults (to which see subsection (2)) which occurred before the commencement of this section (which is two months after Royal Assent of this Act; to which see section 170(3)). The limitation period commences on the date on which the right of action begins to accrue, which is the completion of the relevant works. In practice, this means that claims will be able to be brought in respect of works which were completed from mid-1992 onwards. The limitation period for work completed before commencement will be 30 years; the limitation period for work completed after commencement will be 15 years.

1245 The cause of action created by section 148 has prospective effect. It applies to a wider range of construction products and will apply in respect of defaults which occur after the commencement of sections 148 and 149.

Example

In 2001, the manufacturer of a cladding product misrepresented the properties of the product to the lead contractor for the construction of a high-rise residential building. The manufacturer stated in marketing materials that the cladding product was more resistant to the spread of fire than it was.

The cladding product was installed by the contractor on the high-rise residential building and the relevant works were completed in 2002.

Following fire safety checks it is determined that the cladding product installed on the building creates a serious fire safety risk and should not have been used in the construction of a high-rise building. The use of the product in the building has resulted in dwellings in the building being unfit for habitation at the time of completion of the works due to fire safety risks.

The cladding product now needs to be replaced with a safe alternative. The building owner will bear the costs of this remediation.

To replace the dangerous cladding, the building owner incurs significant costs. Under this section, (and before the limitation period expires) the building owner brings a claim for compensation against the cladding product manufacturer for the costs associated with remediating the unsafe cladding. The court finds that the reason the dwellings in the building were unfit for habitation on completion of the relevant works is the use of the unsuitable product. This was used as a result of the manufacturer's misleading marketing material and the Court orders the manufacturer to pay damages to the building owner.

Section 150: Liability relating to construction products: limitation in England and Wales

Effect

1246 Section 150 provides for the limitation periods in England and Wales for the causes of action created by sections 148 and 149.

1247 Section 150 inserts new section 10B into the Limitation Act 1980, creating limitation periods for actions under sections 148 and 149 of this Act.

1248 Subsection (1) of new section 10B sets out that the limitation period under section 148 is 15 years from the date on which the right of action accrued. Subsections (3) and (8) of section 148 sets out when the right of action begins to accrue. Section 148 applies prospectively only, meaning that it only applies to work completed after commencement of this section, which is two months after Royal Assent of this Act (section 170(3)(e) of this Act).

1249 Subsection (2) of new section 10B sets out the limitation periods under section 149. Section 149 applies to past defaults relating to cladding products (to which see section 149(2)). Where the work was completed before the commencement of this section, the limitation period is 30 years from the date of completion of the work. Where the work is completed after commencement of this section, the limitation period is 15 years.

1250 Subsection (3) of new section 10B provides that in respect of an historical claim under section 149, if the limitation period would expire within the year starting with the commencement date, it will be extended until the expiry of that year, in order to give potential claimants the necessary time to take advice and lodge a claim.

1251 Subsection (4) of new section 10B defines "the commencement date" for the purposes of this section.

1252 Subsections (5) and (6) of new section 10B disapply other limitation periods prescribed by the Limitation Act 1980 in relation to the new causes of action, and lists some exceptions.

1253 Section 150 extends and applies to England and Wales.

Background

1254 Section 150 is a new provision.

1255 This section amends the Limitation Act 1980 to include the specific limitation periods for the new causes of action created by sections 148 and 149 in England and Wales. Section 151 sets out the equivalent provision for Scotland, which has a separate legislative regime. Section 169(7) provides a power to extend, by regulations, equivalent limitation periods to Northern Ireland.

1256 The cause of action created by section 148 will be subject to a 15-year limitation period, which will apply prospectively only (from commencement of the relevant section).

1257 The cause of action created by section 149 has retrospective effect, meaning that it applies to past defaults in relation to cladding products (to which see section 148(2)). The limitation period commences when the work involving the cladding product is completed. The limitation period will be 30 years for work completed prior to commencement, and 15 years for work completed after commencement.

1258 This means that for work completed prior to commencement of this section, a claim must be brought within 30 years of the completion of the work. For work completed after commencement of this section, a claim must be brought within 15 years of the completion of the work.

1259 The limitation periods set out in this section mirror the changes this Act makes to the limitation period under section 1 of the Defective Premises Act 1972 (to which see section 135).

Example 1

Construction work is completed on 10 January 2002 that involves the installation of a cladding product on the exterior of a high-rise residential building in England.

In 2024, it is discovered that dwellings in the building were unfit for habitation on completion of the works. The cladding used in the construction was mis-sold as being suitable for use in the particular construction.

The limitation period will expire on 10 January 2032.

Example 2

Construction work is completed in on 10 January 2024 that involves the installation of construction product in a multi-occupied residential building in England.

In 2028, it is discovered that dwellings in the building were unfit for habitation on completion of the works. The cladding used in the construction was mis-sold as being suitable for use in the particular construction.

The limitation period will expire on 10 January 2039.

Section 151: Liability relating to construction products: limitation in Scotland

Effect

1260 Section 151 provides for the limitation periods in Scotland for the new causes of action relating to construction products.

1261 Subsections (1) and (2) insert new section 18ZD into the Prescription and Limitation (Scotland) Act 1973.

1262 Subsection (1) of new section 18ZD sets out that the limitation period for a civil claim under section 148 is 15 years from the completion of the work.

1263 Subsection (2) of new section 18ZD sets out the limitation periods under section 149, which relates to past defaults relating to cladding products. Where the work was completed before the commencement of this section, the limitation period is 30 years from the date of completion of the work. Where the work is completed after commencement of this section, the limitation period is 15 years.

1264 Subsection (3) of new section 18ZD provides that in respect of an historical claim under section 149, if the limitation period would expire within the year starting with the commencement date, it will not expire until the end of that year this will give potential claimants sufficient time to take advice and lodge a claim.

1265 Subsection (4) of new section 18ZD defines "commencement date" for the purposes of this new section in the Prescription and Limitation (Scotland) Act 1973.

1266 Subsection (5) of new section 18ZD clarifies the application of other limitation periods.

1267 Subsections (6) and (7) of new section 18ZD make provision for there to be a disregard for any time during which the claimant was under a legal disability or failed to bring the claim due to fraud or error on behalf of the defendant. In these circumstances, the limitation period can be extended beyond the prescribed 15 or 30 years. This reflects similar provision in the Limitation Act 1980.

1268 Section 151 extends and applies to Scotland only.

Background

1269 This is a new provision.

1270 This section sets out the limitation periods for the new causes of action created by sections 148 and 149 in Scotland.

1271 The cause of action created by section 148 will be subject to a 15-year limitation period, which will apply prospectively only. The cause of action created by section 149 will have a 30-year limitation period retrospectively, and a 15-year limitation period prospectively.

1272 This means that for work completed prior to commencement of the provision, a claim must be brought within 30 years of the completion of the work. For work completed after commencement, a claim must be brought within 15 years of the completion of the work.

1273 These limitation periods mirror equivalent provision for limitation in England and Wales in relation to the new causes of action.

Example 1

Construction work is completed on 10 January 2002 that involves the installation of cladding product on the exterior of a high-rise residential building in Scotland.

In 2024, it is discovered that dwellings in the building were unfit for habitation on completion of the works. The cladding used in the construction was mis-sold as being suitable for use in the particular construction.

A claim could be brought against the cladding product manufacturer until 10 January 2032.

Example 2

Construction work is completed on 10 January 2024 that involves the installation of construction product in a multi-occupied residential building in Scotland.

In 2028, it is discovered that dwellings in the building were unfit for habitation on completion of the works. The construction product used in the works was mis-sold as being suitable for the particular type of construction.

A claim could be brought against the cladding product manufacturer until 10 January 2039.

Section 152: Cost contribution orders: general definitions

Effect

1274 This section sets out definitions for the purposes of section 153 (Costs contribution orders made by courts), section 154 (Costs contribution orders made by the Secretary of State) and section 155 (Costs contribution orders: assessments).

Section 153: Cost contribution orders made by courts

Effect

1275 This section creates a power to make regulations to enable the Secretary of State to apply to a court for a costs contribution order to be made against a construction products manufacturer, their authorised representative, an importer or distributor ("economic operator") to require them to contribute to the cost of remediation works.

1276 The Secretary of State would be able to make such an application where an economic operator has been successfully prosecuted for non-compliance with construction products regulations, where the relevant product has caused or contributed to making dwellings unfit for habitation.

1277 Regulations made under this power will be subject to the affirmative procedure.

1278 This section should be read alongside section 155, which creates a power to make regulations relating to assessments undertaken as part of this process.

1279 This power applies UK wide.

Background

1280 This is a new provision.

1281 The existing regulatory framework for construction products, which is derived from the EU Construction Products Regulation 2011, sets out the requirements that economic operators (construction products manufacturers, their authorised representatives, importers and distributors) must fulfil when making construction products available on the UK market. Schedule 11 of this Act takes powers to strengthen and extend this regulatory framework.

1282 Sections 153 and 154 create a power to make regulations to enable the Secretary of State to require economic operators to pay for, or contribute towards, the cost of remediation works where they have been successfully prosecuted for breach of construction product regulations and use of the relevant products has caused or contributed to making dwellings unfit for habitation. Section 155 creates a power to make regulations relating to assessments undertaken as part of this process.

Proposed use of power

1283 This power will be used to make regulations to enable the Secretary of State to apply to a court for a costs contribution order to be made against an economic operator where the relevant conditions have been met, to require them to pay an amount in relation to the cost of remediation works. Regulations will set out the matters that the court will need to consider when deciding whether to make a costs contribution order and, where applicable, the amount that an economic operator should be required to pay, and to whom. Regulations will also enable the court to order an economic operator to pay to the Secretary of State the cost of any assessments undertaken as part of this process and making the application to court.

Example

A manufacturer is successfully prosecuted for non-compliance with construction products regulations, following an investigation by the regulator which found that the fire doors that they manufacture do not have the resistance to fire claimed in their marketing material.

The Secretary of State appoints assessors to undertake an assessment of residential buildings where the product has been used. The assessment finds that dwellings have been made unfit for habitation as a result of these doors having been used, and that the doors would need to be replaced to make the dwellings fit for habitation. The assessment also sets out the costs which would be, or have been, reasonably incurred in replacing the fire doors.

The Secretary of State then applies to the court for an order to be made against the manufacturer for the costs of remediation supported by the evidence from the assessor. The order can also include the costs incurred by the Secretary of State from carrying out the assessment and making the application to court.

Section 154 – Cost contribution orders made by the Secretary of State

Effect

1284 This section enables the Secretary of State to, by regulations, make provision for the Secretary of State to make costs contribution orders in relation to construction products.

1285 The Secretary of State will be able to serve a costs contribution order on an economic operator that has been successfully prosecuted under construction products regulations, and where the use of the relevant product has caused, or contributed to, dwellings being unfit for habitation.

1286 Regulations made under this power will be subject to the affirmative procedure.

1287 This section should be read alongside section 155, which creates a power to make regulations relating to assessments undertaken as part of this process.

1288 This power applies UK wide.

Background

1289 This is a new provision.

1290 The existing regulatory framework for construction products, which is derived from the EU Construction Products Regulation 2011, sets out the requirements that economic operators (construction products manufacturers, their authorised representatives, importers and distributors) must fulfil when making construction products available on the UK market. Schedule 11 of this Act takes powers to strengthen and extend this regulatory framework.

1291 Sections 153 and 154 create a power to make regulations to enable the Secretary of State to require economic operators to pay for, or contribute towards, the cost of remediation works where they have been successfully prosecuted for breach of construction product regulations and use of the relevant products has caused or contributed to making dwellings unfit for habitation. Section 155 creates a power to make regulations relating to assessments undertaken as part of this process.

Proposed use of power

1292 This power will be used to make regulations to enable the Secretary of State to make a costs contribution order against an economic operator where the relevant conditions have been met, to require them to pay the relevant cost of remediation works. Regulations will set out the matters that the Secretary of State will need to consider when deciding whether to make a costs contribution order and, where applicable, the amount that an economic operator should be required to pay. Regulations will also enable the Secretary of State to require an economic operator to pay for cost of any assessments undertaken as part of this process. Regulations will also allow for an economic operator to apply for the decision to be reviewed by the Secretary of State and will set out the circumstances under which appeals can be made to a court or tribunal.

Example

A manufacturer is successfully prosecuted for non-compliance with construction products regulations, following an investigation by the regulator which found that the fire doors that they manufacture do not have the resistance to fire claimed in their marketing material.

The Secretary of State appoints assessors to undertake an assessment of residential buildings where the product has been used. The assessment finds that dwellings have been made unfit for habitation as a result of these doors having been used, and that the doors would need to be replaced to make the dwellings fit for habitation, and the costs of carrying out such remediation.

The Secretary of State then makes a costs contribution order against the manufacturer. This order also requires the manufacturer to pay the costs incurred by the Secretary of State in relation to the assessment process.

Section 155: Cost contribution orders: assessments

Effect

1293 This section creates a power to make regulations relating to assessments undertaken for the purposes of costs contribution orders.

1294 Following a successful prosecution for non-compliance with construction products regulations, regulations will enable the Secretary of State to appoint persons to undertake an assessment to inform the decision as to whether the conditions have been met, and the terms on which a costs contribution order can be made, or the terms of an application to the court for an order to be made, and the terms of any order sought from the court.

1295 Regulations made under this power will be subject to the affirmative procedure.

1296 This section should be read alongside sections 153 and 154, which set out the conditions for making a costs contribution order.

1297 This power applies UK wide.

Background

1298 This is a new provision.

1299 The existing regulatory framework for construction products, which is derived from the EU Construction Products Regulation 2011, sets out the requirements that economic operators (construction products manufacturers, their authorised representatives, importers and distributors) must fulfil when making construction products available on the UK market. Schedule 11 of this Act takes powers to strengthen and extend this regulatory framework.

1300 Sections 153 and 154 create a power to make regulations to enable the Secretary of State to require economic operators to pay for, or contribute towards, the cost of remediation works where they have been successfully prosecuted for breach of construction product regulations and use of the relevant products has caused or contributed to making dwellings unfit for habitation. This section creates a power to make regulations relating to assessments undertaken as part of this process.

Proposed use of power

1301 This power will be used to make regulations to enable the Secretary of State to appoint persons to undertake an assessment of buildings where the relevant product has been used. The assessment will consider whether the conditions for making a costs contribution order have been met, the remediation works required to make the building or dwelling fit for habitation, and cost of undertaking these works. Regulations will specify the criteria that a person must meet before being appointed as an assessor for this purpose.

Fire safety

Section 156: Amendment of Regulatory Reform (Fire Safety) Order 2005

Effect

1302 This section makes the following amendments to the Regulatory Reform (Fire Safety) Order 2005, "the Fire Safety Order" as set out below. The Fire Safety Order applies to non-domestic premises in England and Wales. This section extends to Wales where applicable.

1303 In 2019 the Home Office published a call for evidence to better understand how well the Fire Safety Order (FSO) works in practice and whether any changes needed to be made to it. This was followed by a public consultation on fire safety that set out initial Government proposals to respond to the findings of the call for evidence, and finally by the Government's response to the consultation, published in March 2021, which announced the

Government's proposals to legislate to amend the FSO as set out below. The FSO imposes a range of fire safety duties on Responsible Persons (which may include building owners or managers) and the changes below largely either add to or amend these duties.

Recording fire risk assessments

Effect

1304 This section in subsection (2) introduces a requirement for all Responsible Persons to record their fire risk assessment in full. It replaces the current requirement to only record significant findings of the assessment in specified circumstances.

Background

1305 At present all Responsible Persons are required to undertake a fire risk assessment, but they are required to record the significant findings of that assessment only when they are an employer of five or more employees or where there is a licence in place, or an alterations notice under the FSO requiring this. Concern was raised during the call for evidence that it is difficult for enforcing authorities to evidence a breach of the Responsible Person's duties under the FSO or for the Responsible Person to demonstrate compliance if the full fire risk assessment is not recorded. We are therefore introducing a requirement for all Responsible Persons to do so for all regulated premises. The Responsible Person will be able to access guidance to assist with completing and recording their fire risk assessment.

Example

The Responsible Person owns an office and has only three employees. They must undertake a fire risk assessment and update it regularly for the purpose of ensuring the safety from fire of their employees and/or any visitors or customers but they do not need to record their risk assessment. Another responsible person also owns an office but has 50 employees. They must also undertake a fire risk assessment and update it regularly and, additionally, record the significant findings of the assessment, but they are not required to record the full assessment.

Under this new provision all Responsible Persons, regardless of their individual circumstances, must record their fire risk assessment in particular the findings of the assessment including measures that have or will be taken to comply with the order and any group of persons identified as being especially at risk. The intention is to ensure enforcing authorities and other relevant persons (i.e. residents or employees) have access to the full risk assessment to aid authorities when enforcing the FSO and to provide assurance to relevant persons that fire safety risks in the building where they live or work are being safely and appropriately managed.

Competence of Fire Safety Professionals

Effect

1306 A new article 9A requires that a Responsible Person must not appoint a person to assist them in the undertaking or reviewing of a fire risk assessment unless that person is competent. A person is regarded as competent for this purpose where they have sufficient training, experience or knowledge and other qualities to enable them to undertake this role. This duty applies to the appointment of either an individual or a company. Where the person appointed is a company it is envisaged the Responsible Person would need to establish from the company that its staff were considered competent. Where there are two or more appointed persons, the Responsible Person must make arrangements to ensure adequate cooperation between them.

Background

1307 The intention of Article 9A is to address the recommendations made in the Independent Review, which recommended a review of competence within fire safety critical roles, including Fire Risk Assessors.

1308 Building on this report, in the Call for Evidence outlined above the Home Office sought views on the existing provisions in the FSO relating to competent persons and whether they remained sufficient. Respondents highlighted concern about the variable quality of fire risk assessments and the lack of a competence requirement on those engaged by a Responsible Person to complete them.

1309 Proposals to address this were included in the Fire Safety Consultation which set out a new requirement on the Responsible Person that any person appointed by them to undertake all, or any part, of the fire risk assessment must be competent. 96 per cent of respondents to the consultation agreed with this proposal.

> Example
> The provision is drafted to enable the Responsible Person to assess the level of competence required to undertake a fire risk assessment on the basis of the type of building and its complexity. The Responsible Person will be able to access guidance on how to complete or review a fire risk assessment and identify a competent person or entity to assist them.

Recording fire safety arrangements

Effect

1310 Article 11(2) is amended to require all Responsible Persons to record fire safety arrangements.

Background

1311 At present Responsible Persons are required to implement appropriate measures for their premises to enable effective planning, organisation, control, monitoring and review in order to comply with the requirements of the Order. At present recording is required only where they employ five or more employees or where there is a licence in place, or an alterations notice under the FSO requiring recording. We are introducing a requirement for all Responsible Persons to record fire safety arrangements to assist Responsible Persons to more easily demonstrate compliance and enforcing authorities to evidence a breach of the Order. This amendment will ensure consistency in approach with article 9A of the Order. The Responsible Person will be able to access guidance to assist their recording of their fire safety arrangements.

Example

The Responsible Person owns an office and has only three employees. They must make and give effect to fire safety arrangements as are appropriate, having regard to the size of their undertaking and the nature of its activities, for the effective planning, organisation, control, monitoring and review of the preventive and protective measures. Another responsible person also owns an office but has 50 employees. They must make and give effect to fire safety arrangements as described above and they must record the arrangements.

Under this new provision all Responsible Persons, regardless of their individual circumstances, must record their fire safety arrangements in full. The intention is to ensure enforcing authorities and other relevant persons (i.e. residents or employees) are able to access the fire safety arrangements to aid authorities when enforcing the FSO and to provide assurance to relevant persons that fire safety issues in the building where they live or work are being safely and appropriately managed.

Provision of fire safety information to residents

Effect

1312 A new article 21A will require Responsible Persons to provide residents of buildings containing two or more sets of domestic premises with specific information about relevant fire safety matters. This includes information about any risks to residents of the premises identified within the risk assessment, preventative and protective measures, name and UK address of the Responsible Person, the identity of any person appointed by the Responsible Person to assist them with making or reviewing the risk assessment under article 9, the identity of any competent person nominated by the Responsible Person to implement fire-fighting and fire detection measures and any risks to relevant persons throughout the building identified by other Responsible Persons in the building. Article 21A(3)(g) also confers a power on the Secretary of State in England, and the Welsh Minister for Wales, to make regulations to extend the fire safety information that Responsible Persons must provide and to specify the format and frequency for which the information must be provided.

Proposed Use of Power

1313 The proposed delegated power will ensure that the list of information in relation to relevant fire safety matters may be extended in future if required. This power will also enable the Secretary of State in England, and the Welsh Minister in Wales, to specify the frequency and format in which the information should be provided.

Background

1314 Under Article 19 of the FSO a Responsible Person must provide employees with relevant information including on any risks identified in the fire risk assessment, the identity of competent persons nominated or appointed to assist them with preventative and protective measures taken in their workplace and details of risks to relevant persons throughout the building identified by other Responsible Persons sharing or having duties in the premises. Currently, the FSO does not require that a Responsible Person should provide fire safety information to residents, with the exception of article 15(2a) in relation to in the event of serious and imminent danger to relevant persons.

1315 The Government considered how to widen the provision of information requirements, under the FSO, by extending them to include residents of buildings containing two or more sets of domestic premises. Proposals were included in the Fire Safety Consultation which set out new requirements for Responsible Persons to share fire safety information with residents of multi-occupied residential buildings. Findings from the consultation showed that 90% of respondents were supportive of the proposals.

Example

Responsible Persons for of buildings containing more than two sets of domestic premises will be required to provide information about relevant fire safety matters to residents in their buildings. The intention of this provision is to ensure that residents have access to relevant fire safety information about the building where they live to help ensure they are safe and feel safe in their homes.

Co-operation and co-ordination between Responsible Persons

Effect

1316 Article 22 of the Fire Safety Order requires Responsible Persons, where there is more than one responsible for a premises, to co-operate with each other and co-ordinate their actions to ensure compliance with the order. In addition to their existing duties under this article, Responsible Persons will now be required to take reasonable steps to establish whether any other Responsible Person in the premises shares, or has, duties in respect of the premises. If they do they must also inform each other of their name, UK address and the parts of the premises for which they consider themselves to be Responsible Person and keep a record of that information.

Background

1317 Respondents to the call for evidence raised concern about Responsible Person's compliance with the duty to cooperate and coordinate with other Responsible Persons in multi-occupied premises (as set out in Article 22 of the FSO). Respondents highlighted problems with Responsible Persons being unaware of their duties under the Order and challenges for enforcing authorities in identifying relevant Responsible Persons and establishing whether or not there has been co-operation. It is considered that requiring Responsible Persons to

identify themselves to other Responsible Persons in the same premises by informing each other of their name and UK address as well as providing a view on the parts of the premises they consider themselves to be Responsible Person will encourage co-operation and assist enforcing authorities to identify the correct Responsible Persons and to establish whether the duty to co-operate has been complied with.

1318 The Fire Safety Consultation included a proposal to require all Responsible Persons to record and, as necessary, update who they are, the extent of their responsibility under the Fire Safety Order and their contact information. 92% of respondents to the Fire Safety Consultation agreed with this proposal.

1319 The consultation also included a proposal to require Responsible Persons to take reasonable steps to identify themselves to all other Responsible Persons. 95% of respondents agreed with this proposal.

1320 We are therefore amending Article 22 of the Fire Safety Order to require that all Responsible Persons for premises regulated under the Order must establish whether any other Responsible Person in the premises shares, or has, duties in respect of the premises and to inform each other of their name, address and parts of the premises they consider themselves to be Responsible Person for. To inform and support Responsible Persons in discharging this duty, best practice will be provided in guidance.

Example

This is a hypothetical example. In a block of residential flats which is ten storeys high and has a supermarket on the ground floor, there may be one Responsible Person for the supermarket, another for floors 1-5 and another for floors 6-10. While they each have a specific area within the building for which they are Responsible Person, they must work together to ensure any fire safety actions they take complement those of the other two and do not in any way hinder any fire safety actions taken by each other. For example, the Responsible Person in the supermarket must not block entry and exit to the floors above by storing stock in a stairwell. Each Responsible Person must take reasonable steps to identify the other Responsible Persons, provide them their name and address and an explanation of the parts of the premises they consider themselves to be Responsible Person to strengthen co-operation throughout the building.

Information sharing between successive Responsible Persons

Effect

1321 A new article 22A will require departing Responsible Persons to provide relevant fire safety information to incoming Responsible Persons. Relevant fire safety information means: (a) records kept under article 9(6) of fire risk assessments and reviews under article 9; (b) the identity of any person appointed by the Responsible Person to assist them with making or reviewing the fire risk assessment; (c) the identity of any other persons who are Responsible Persons in relation to the premises (where known); (d) where the premises consist of or

include a higher-risk building under the Building Safety Act, the identity of any other Accountable Persons in the premises (where known); (e) any information provided to the Responsible Person under regulation 38 of the Building Regulations 2010 (S.I. 2010/2214) (this is information provided to the Responsible Person by the person carrying out building work following completion or occupation relating to the design, construction, services, fixtures and fittings to assist the Responsible Person to operate and maintain the building safely). This article also includes a regulation making power for the Secretary of State in England, and the Welsh Minister for Wales, to enable them to extend the relevant fire safety information that must be provided as well as to specify how frequently all of this information should be provided and in what format.

Proposed use of Power

1322 The Secretary of State in England, and the Welsh Minister in Wales, will have the power to make regulations to extend the fire safety information that departing Responsible Persons will be required to provide to incoming Responsible Persons, and to specify the format and frequency within which the information must be provided.

Background

1323 To maintain a clear thread of information central to ensuring fire safety across the entirety of a building's lifetime, the Fire Safety Consultation included a proposal to amend the FSO to require Responsible Persons to take reasonable steps to share all relevant fire safety information with subsequent Responsible Persons. 95% of respondents to the consultation agreed with this proposal. We are therefore seeking to amend the FSO to deliver this.

1324 A new Article 22A will apply to all premises under the FSO. All departing Responsible Persons of these premises must provide the relevant fire safety information specified in a new Article 22A(3) to incoming Responsible Persons before they depart. It is intended that this requirement will facilitate the preservation of relevant fire safety information between successive Responsible Persons across the lifetime of a building. This compliments the "Golden Thread" provision for Accountable Persons in the Building Safety Act.

Example

The departing Responsible Person must obtain and provide information to the incoming Responsible Person, in an auditable way, before they are no longer the Responsible Person. If the departing Responsible Person is not able to identify the incoming Responsible Person it is envisaged, they should ascertain the identity with the building owner and/or manager of the building and then provide the relevant fire safety information to the incoming Responsible Person, or, failing that, they should provide the relevant fire safety information to the owner of the building. The owner of the building, as Responsible Person, should then make arrangements to provide this information to the incoming Responsible Person.

Co-operation and co-ordination between Responsible Persons and Accountable Persons

Effect

1325 A new article 22B will apply to premises consisting of or including a residential unit in a higher-risk building (a building in England that (a) is at least 18 metres in height or has at least 7 storeys, and (b) contains at least 2 dwellings or any units of living accommodation) and require Responsible Persons for such premises to co-operate with Accountable Persons in the premises to enable them to carry out their duties under this Act. There is a reciprocal duty of co-operation between Accountable Persons and Responsible Persons in section 109 of this Act.

Background

1326 This is a new provision. This requirement applies to all Responsible Persons for premises in a higher-risk building. For buildings subject to the Building Safety Act, the Responsible Person(s) must take reasonable steps to identify any Accountable Person(s) in the building and cooperate with them for the purpose of carrying out their respective duties to collectively manage building and fire safety for the entire building. The purpose of this requirement is to ensure that the duties of Responsible Persons and Accountable Persons will contribute towards a whole-building approach to building and fire safety.

Example

Where the Responsible Person is also the Accountable Person, they must ensure that they comply with the requirements of the FSO for the common parts while this should also contribute towards their management of safety for the whole building. For example, the fire risk assessment for the common parts of the building could contribute to the safety case report, and the provision of fire safety information to residents could complement or support the residents engagement strategy required under the building safety regime.

The same will be expected where the Responsible Person and Accountable Person are not the same person and where there are multiple Responsible Persons and/or Accountable Persons, the Responsible Person must identify themselves to the other(s) in order to be able to discharge their cooperation duty and for the purpose of enabling the Accountable Person to carry out their duties.

In practice, the Responsible Person should make the Accountable Person aware of fire safety risks identified and precautions taken in the common parts of the building.

Fines

Effect

1327 Article 32(4) and (7) of the FSO set out the financial penalties available for criminal offences of failing to comply with requirements relating to the installation of luminous tube signs, failing to comply with any requirements imposed by an inspector, under article 27(1)(c) or (d), and impersonating an inspector. At present these offences are subject to a maximum of level 3 fines but the amendment will increase this to unlimited fines.

Background

1328 This Section amends Article 32 (4) and (7) of the FSO. We are introducing these changes further to the information gathered in the Call for Evidence and following the public response to proposals set out in the Fire Safety Consultation. Furthermore, these changes will make the FSO consistent with similar offences in other legislation such as the Building Safety Act and the Health and Safety at Work Act. Financial penalties for criminal offences in the FSO have historically been lower than similar offences in the Building Act. Increasing the level of fines for these three offences in the FSO to the same level as for other similar offences will encourage compliance.

1329 This amendment to the level of financial penalty that may be imposed for these offences enables the Magistrates Court, when prosecuting for these offences under the FSO to apply a higher level of fine for the most serious offences. Accordingly, this ensures these offences carry a suitable deterrent to discourage non-compliance with the Order.

Example

As an enforcing authority for the FSO, Fire and Rescue Authorities undertake routine building inspections to ensure compliance with the Order. The Inspector can take enforcement action when non-compliance has been identified, and prosecution action may be taken against the Responsible Person or dutyholder. If that person is found guilty, the Magistrates' Court may decide to impose a fine.

By increasing these fines from a level 3 (£1,000) to unlimited, the Court is provided with a greater range of penalty to impose to reflect the severity of the offence. Through this change a court, after considering the evidence presented, will have the ability to impose unlimited fines for the most serious offences.

Article 50 Guidance

Effect

1330 Article 50 of the FSO requires the Secretary of State to ensure that such guidance as he considers appropriate to assist Responsible Persons to discharge their duties under the FSO is made available to them. Article 50 was previously amended in the Fire Safety Act 2021 to provide that in proceedings for breach of the FSO (for buildings in England containing two or more sets of domestic premises) proof of failure to comply or compliance with applicable risk based guidance may be relied upon as supporting whether or not there was a breach of the Order. Further amendment in article 50(1A)will apply this provision to all guidance issued in accordance with article 50.

Background

1331 Currently under Article 50, the Secretary of State is required to make sure that such guidance as he considers is made available to assist Responsible Persons with discharging their duties under the FSO. Responses to the 2019 call for evidence and the Fire Safety Consultation have indicated that guidance should be strengthened to encourage compliance and to make clear what is statutory guidance. Article 50 guidance is made available to assist responsible persons to discharge their duties under the Order. It also reflects a similar approach to guidance under the Building Safety Act.

Example

Responsible Persons can follow guidance issued under Article 50 to assist with discharging their duties under the FSO. Even if they do not have particular experience in an element of their duties, if they follow the relevant guidance related to that duty they will have comfort that in the event of any breach of the FSO the Court may consider their compliance with the guidance as tending to support compliance with the relevant duty under the FSO.

Architects

Section 157: Architects: discipline and continuing professional development

Effect

Discipline

1332 This section allows the disciplinary orders made against architects by the Professional Conduct Committee (PCC) of the Architect Registration Board (the Board), the statutory regulator of architects in the UK, 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.

Continuing professional development

1333 This section in subsections (3)(a) and (3)(b) allow the Board 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.

1334 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.

1335 This section in subsection (3)(c) allows the Board to determine a period of extension for an individual architect to complete their recent training. This section 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

Discipline

1336 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.

1337 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.

Continuing professional development

1338 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. 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.

1339 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: Discipline

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.

Example 2: Continuing professional development

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.

Section 158: Architects: Appeals Committee

Effect

1340 This section establishes an Appeals Committee of the Board that will hear appeals against a decision to refuse a person's application for registration, or to remove or not re-enter a person's name on the Register, where the Board is not satisfied of the person's competence. This is to give persons the opportunity to challenge registration decisions made by the Board or the Registrant. The Board will determine rules for the procedure of an appeal and the composition of the Appeals Committee. The Board must consult the Secretary of State on the composition of the Appeals Committee to ensure adequate representation. Upon the determination of the appeal, the Appeals Committee will make the final decision on the case appealed. The Appeals Committee's decision can only be overturned by the High Court.

Background

1341 Section 22 of the Architects Act 1997 provides a judicial route of appeal for aggrieved persons. This section provides a non-judicial route of appeal to aggrieved persons, which will make the appeals process more accessible for architects. This section will ensure that architects removed from the Register under the new competence regime established by section 157 have adequate recourse to challenge the Board's decision.

Example

The Board is not satisfied with an architect's demonstration of recent practical experience or training and therefore does not re-enter the architect's name on the Register. The architect will be able to appeal this decision to the Appeals Committee, who will determine whether or not the architect has demonstrated recent practical experience or training.

If the Appeals Committee is satisfied that the architect has indeed demonstrated recent practical experience or training then the architect's name shall be re-entered on the Register. If the Appeals Committee find that the architect has not demonstrated recent practical experience or training then the Board's decision shall stand and the architect shall be removed from the Register.

Section 159: Architects Registration Board: fees and discharge of functions by a committee

Effect

1342 This section 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

1343 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. Following the end of 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 section 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

This will be determined in secondary legislation, 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.

Housing complaints

Section 160: Housing complaints made to a housing ombudsman

Effect

1344 This section enables 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.

1345 The requirement for the landlord's complaints process to have been exhausted is preserved by amendments to para (1)of the Housing Act1996which require a complaint to be made in accordance with the scheme. 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.

1346 The new paragraph inserted into the Housing Act 1996 (1A) retains the existing procedures 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.

1347 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.

1348 This should speed up redress for social housing complainants as well as creating equity of provision.

Background

1349 This provision applies to England only.

1350 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.

1351 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.

1352 A designated person can be an MP, a Councillor or a recognised tenant panel. It means that currently, if, after a landlord's internal complaints process has been exhausted, 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 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.

1353 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.

1354 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: New complaints process

Current process

A resident makes a complaint to their landlord and completes the landlords complaints/dispute process.

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

Again, a resident makes a complaint to their landlord and completes the landlords complaints/dispute process.

The resident remains dissatisfied and decides to escalate to redress level and contacts the Housing Ombudsman Service directly, asking them to investigate their complaint.

Part 6: General

Section 161: Liability of officers of body corporate etc

Effect

1355 This section provides that, where a corporate body commits a criminal offence under Parts 2 or 4 of this 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. Section 40 makes similar provision in respect of the criminal offences in the Building Act 1984.

1356 Subsection (4) provides an exception where a relevant company appoints a paid director for a building safety purpose. In this case, all unpaid directors of the company will be relieved of their personal criminal liability for breaches of Part 4 duties.

1357 Subsection (5) defines a "building safety purpose" as the function of supporting a relevant company in complying with its Part 4 duties. It also sets out that a "relevant company" is a resident management company (as defined by regulations made by the Secretary of State under section 111), Right to Manage companies and Commonhold Associations.

Effect in Wales

1358 This section will apply in Wales.

Background

1359 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.

1360 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 section should be to bring home the importance of building safety responsibilities to those directing companies.

1361 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.

1362 This section has been modelled on section 37 of the Health and Safety at Work Act 1974.

Section 162: Review of regulatory regime

Effect

1363 This section sets out a mandatory process for the Secretary of State to periodically appoint an independent person to review the effectiveness of the building regulatory regime and the system of regulation for construction products.

1364 This section provides a deliberately non-prescriptive framework to allow the reviewer to operate independently. The reviewer can choose how much to focus on each area of review; so, for example, if some of the areas listed in this section seem to be operating well and others less well, the reviewer can choose to prioritise reviewing the areas that are operating less well.

1365 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.

1366 The Secretary of State must ensure the person is independent from the Secretary of State, the Building Safety Regulator, the building control profession, the built environment industry, the construction products industry, and local authorities.

1367 The Act sets out the specific matters the independent person must review, which taken together encompass the key elements of the building regulatory system and the construction products regulatory system:

- The effectiveness of the Building Safety Regulator;
- The effectiveness of the UK wide system for the regulation of construction products;
- The adequacy and effectiveness of the provisions of the Building Act 1984 as it pertains to England, barring new section 105C;
- The adequacy and effectiveness of Parts 2 and 4 of the Building Safety Act (these relate to the Building Safety Regulator's powers and functions, and the new, more stringent regulatory regime for higher-risk buildings in occupation);
- Any connected matters, to be determined by the independent person; and
- Any other matters specified in the appointment itself.

1368 This section does not allow the Secretary of State to limit the considerations of the reviewer.

1369 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 appropriate. The Secretary of State is required to publish a copy of this report.

Background

1370 This is a new provision.

1371 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

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. The Secretary of State must identify and appoint a person who, in their view, meets the statutory independence test included in this section.

The Secretary of State may consider that there are issues that might impact building safety, but that are beyond the remit of the review as set out in subsections (1)(a)-(c). In this instance they can instruct the independent person to consider additional matters, under subsection (1)(e).

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.

The reviewer might consider parts of the regulatory regime to be functioning effectively. If that is the case, the reviewer may choose to deal with that area much more briefly in their report.

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.

Section 163: Financial Provisions

1372 This section recognises that, as a matter of House of Commons procedure, a financial resolution needs to be agreed for this Act.

Section 164: Crown Application

Effect

1373 This section provides for provisions in Part 2 and Part 4 (except sections 99, 100 and 103) to bind the Crown.

1374 It also provides for Sections relating to remediation of certain defects (sections 116 to 125 and Schedule 8), the new homes ombudsman scheme (sections 136 to 143 and Schedule 9), new build home warranties (sections 144 and 145), and liability of officers of body corporate (section 161) to bind the Crown.

1375 Contravening these provisions does not make the Crown criminally liable. This exclusion from liability does not affect the criminal liability of persons in the service of the Crown.

Background

1376 This is a new provision.

Section 165: Application to Parliament

Effect

1377 Section 165 applies Part 4 to the Palace of Westminster, if it (or any part of it) is a higher-risk building within the meaning of that Part.

1378 It makes the Corporate Officers of the House of Lords and House of Commons the accountable persons, acting jointly. The Corporate Officers are not criminally liable for contraventions of provisions made under Parts 2 and 4. This exclusion from criminal liability does not affect the liability of members of the House of Lords staff or the House of Commons staff.

1379 This section disapplies provisions regarding compliance notices under Part 4 (sections 99, 100 and 103) and powers of entry of authorised officers (paragraphs 1 to 3 of Schedule 2).

Background

1380 This is a new provision.

Section 166: Power of Secretary of State to make consequential provision

Effect

1381 This section confers on the Secretary of State a regulation-making power to make consequential amendments which arise from this Act 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 section are subject to the negative procedure. This section provides that the Secretary of State may not make consequential provision that may be made by the Welsh Ministers under section 167.

Section 167: Power of Welsh Ministers to make consequential provision

Effect

1382 This section is self-explanatory.

Section 168: Regulations

Effect

1383 This section ensures that regulations made under the Act can include any consequential amendments as well as transitional provisions and cover any other incidental matters.

1384 This section also provides that regulations made under this Act are to be made by statutory instrument and sets out which sets of regulations require the affirmative procedure.

Section 169: Extent

Effect

1385 This section makes provision about territorial extent for the Act. Subsections (1) to (6) set out the territorial extent for the provisions in the Act; see Annex A for additional detail.

1386 Subsection (7) allows the Secretary of State to make provision extending sections 147 to 149 – which make provision about liability relating to construction products – to Northern Ireland. Subsection (7)(a) permits the Secretary of State by regulations to make provision extending sections 147 to 149 to apply to Northern Ireland. Subsection (7)(b) allows the Secretary of State to amend this Act and any other enactment in relation to the application of those provisions to Northern Ireland.

Section 170: Commencement and transitional provision

Effect

1387 This section is self-explanatory.

Section 171: Short title

Effect

1388 This section is self-explanatory.

Schedule 1: Amendments of the Health and Safety at Work etc Act 1974

Effect

1389 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.

1390 Paragraph 2(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 section 17 and section 18 for the Building Safety Regulator to produce a strategic plan exclusively in connection with its building functions. Paragraph 2(3) makes a minor consequential amendment.

1391 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 to the building functions, and pay committee members for their work.

1392 Paragraph 4 amends section 12(3) of the Health and Safety at Work etc Act 1974, which creates 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.

1393 Paragraph 5(2) clarifies the existing provision in section 13(3) of the Health and Safety at Work etc Act 1974 allowing the Health and Safety Executive to make agreements with others to enable them to carry out Health and Safety Executive functions. The clarification makes clear that any such functions would be carried out by another person (such as an employee of a Local Authority or a fire and rescue authority) on behalf of the Health and Safety Executive. Paragraph 5(3) makes a similar clarificatory amendment to the existing provision in section 13(4) of the Health and Safety at Work etc Act 1974, allowing the Health and Safety Executive to make agreements with Ministers, Government departments and public authorities for the Health and Safety Executive to carry out their functions. The clarification makes clear that any such functions would be carried out by the Health and Safety Executive on behalf of the Minister, Government department or public authority.

1394 Paragraph 5(4) makes a minor consequential amendment. Paragraph 5(5) 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.

1395 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 Act 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.

1396 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.

1397 Paragraph 8(2) 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.

1398 Paragraph 8(3) 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.

1399 Paragraph 8(4) operates alongside section 29 of this Act to confirm that staff from within the Health and Safety Executive or other organisations working with the Health and Safety Executive may sign documents on behalf of the Executive, where they have been authorised to do so. This provision might be used to enable certain members of staff from local authorities or Fire and Rescue Services to sign documents on behalf of the Building Safety Regulator, where those organisations have been requested to provide support to the Building Safety Regulator under section 13 of this Act.

Background

1400 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

1401 Paragraph 1 of this Schedule makes available to authorised officers (as defined and appointed under section 22) 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 be made only at a time that is reasonable – or at any time if the authorised officer suspects that a dangerous situation exists.

1402 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.

1403 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. This warrant may, or may not, confer power to enter by force.

1404 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.

1405 When on non-domestic premises under 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 Act where there is a risk the evidence will not be accessible in the future. In relation to domestic premises, the authorised officer may exercise these powers if that is permitted by the warrant, which will be the case only if the justice of the peace issuing the warrant considers it necessary.

Background

1406 The physical inspection of buildings during construction and occupation 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 functions. These paragraphs also provide powers for authorised officers to seize evidence while on the premises.

1407 As with many similar powers of entry, where expertise is required during the search beyond that which the officer possesses, they are able 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.

1408 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

1409 Paragraph 4 of this Schedule gives an authorised officer the power to require the provision of relevant information in connection with the Regulator's building functions. This will be specified as such 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.

1410 In order to ensure that no one can be required to provide information that incriminates themselves, paragraph 4(6) provides that information obtained from a person under this power may be used against them only in a prosecution for the offences in section 24 (providing false or misleading information to the regulator) and paragraph 6(1) of this

Schedule (failing to provide information, documents etc when required to do so), perverting the course of justice or where that person makes a contradictory statement in evidence on their own behalf.

1411 Paragraph 4 also confers power on authorised officers to require facilities and assistance for a relevant purpose.

Background

1412 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.

1413 These provisions are similar to those of other regulatory bodies.

> ### Example
> 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 requests to see various documents including the latest building safety risk assessment. The documents are not provided. The authorised officer then issues a notice under paragraph 4 of Schedule 2, requiring the Accountable Person to submit these documents.

Offence of failing to provide information, documents etc

Effect

1414 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, facilities or assistance 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 until the commencement of paragraph 24(2) of Schedule 22 of the Sentencing Act 2020).

Background

1415 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

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 requests to see various documents including the latest building safety risk assessment. The documents are not provided. The authorised officer then issues a notice under paragraph 4 of Schedule 2, requiring the Accountable Person to submit copies of the 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 1-2 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

1416 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.

1417 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

The explanatory note for this Schedule is provided in the note for section 27.

Schedule 4: Transfer of approved inspectors' functions to registered building control approvers

The explanatory note for this Schedule is provided in the note for section 43.

Schedule 5: Minor and consequential amendments in connection with Part 3

1418 This Schedule contains amendments to the Building Act 1984 and other Acts, that are minor and consequential to measures in Part 3 of this Act.

1419 Paragraphs are grouped together where it is convenient to do so because they have similar effects or are pursuant to the same sections in the Act.

Paragraphs 2, 3, 4(2), 5(2), 6, 9(2)-(5), 9(7), 11(2)-(3), 12(2), 13(2),13(5)-(6), 14(2), 14(3)(b), 14(4)(b), 15(2)-(5)(a), 15(9), 16, 22(8), 46(2), 50, 53, 55(4)(a), 57(3)(a), 71, 78(2), 83(2), 83(9), 84(3)

1420 These paragraphs change references to the Secretary of State to "appropriate national authority" and/or make amendments consequential to this, including where regulations are to be made either by the Houses of Parliament or Senedd Cymru, in recognition that these functions are performed by, or powers fall to, the Secretary of State in England and Welsh Ministers in Wales and legislative competence lies with the Houses of Parliament in England and Senedd Cymru in Wales.

1421 "Appropriate national authority" is defined as the Secretary of State in England and Welsh Ministers in Wales in amended section 126 of the Building Act 1984. This is not a substantive change; instead, it reflects the true position in the Building Act 1984 since the transfer of Secretary of State functions to Welsh Ministers in a Transfer of Functions Order in 2009.

Paragraphs 4(3), 13(3), 21(2), 22(2), 23(2), 24(2), 25, 26(2), 27(2), 30(4), 32(2) and (6)(b), 33, 34, 35, 37, 39, 55(2), 55(4)(b), 55(5), 57(2), 61, 62, 63, 64, 65, 66, 68, 69, 70, 83(4), 84(2)

1422 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 section 32; or

- They insert references to the Building Safety Regulator alongside local authorities where the relevant provision includes or relates to the wider roles of local authorities and the Building Safety Regulator under the Act rather than the narrower role of building control authority.

Paragraph 5(3)

Effect

1423 This paragraph amends section 3 of the Building Act 1984 which deals with the exemption of prescribed classes of buildings, services, fittings or equipment from building regulations.

1424 The new section 3(2A) allows for the regulator in England to make a proposal to the Secretary of State for the giving, by the Secretary of State, of a direction to exempt a particular building or a particular class of building at a particular location. The new section 3(2B) requires the regulator to consult such persons as it considers appropriate before making a proposal. New section 3(2C) requires the Secretary of State to consult with the regulator, and any other person that the Secretary of State considers appropriate, before giving a direction, other than a direction proposed by the regulator. This mirrors the approach taken to regulations under the Building Act 1984 for England in new section 120B.

Background

1425 Under section 3(2) the Secretary of State may give a direction to exempt from all or any of the provisions of building regulations (as regards England) a particular building, or buildings of a particular class at a particular location, either unconditionally or subject to conditions. Under section 3(3) a person who contravenes or permits a direction given under subsection (2) to be contravened commits an offence and is liable to be fined.

Example 1

The regulator considers that the Secretary of State should give a direction under section 3(2) to exempt a particular class of buildings in England from specific building regulations' requirements. The regulator considers it appropriate to consult with the Building Advisory Committee on this matter. After doing so, the regulator makes the proposal to the Secretary of State for the direction to be given. The Secretary of State assesses the matter and decides to give the direction without needing to consult because the regulator has already consulted.

Example 2

The Secretary of State, of his or her own accord, wishes to give a direction under section 3(2) exempting a particular class of buildings in England from specific building regulations' requirements. The Secretary of State consults with the regulator and also considers it appropriate to consult with the Building Advisory Committee and other relevant stakeholders. After consulting, the Secretary of State considers it appropriate to give the direction and proceeds to do so.

Paragraphs 5(4), 14(7), 22(7) and 44(2)

1426 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: section 11(6) (breach of a direction by the Secretary of State dispensing with or relaxing a particular requirement of building regulations); 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) and section 52(4) (failure to give a notice required under s52(3)).

1427 These paragraphs remove references to level 5 on the standard scale, as this has been abolished by section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and replaced with an unlimited fine. Paragraphs 5(4), 14(7) and 22(7) 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 7, 41(2)(b)

1428 These paragraphs delete the reference to "building regulations" in section 5(3)(b) and section 48(1)(b) of the Building Act 1984 in recognition that new section 35 covers both contraventions of building regulations and also requirements imposed under building regulations, as set out in section 38. An example of a requirement imposed under building regulations could be a requirement imposed as part of a building control approval.

Paragraphs 8, 38, 49

1429 These paragraphs amend sections 5 and 58 of the Building Act 1984 consequential on new section 125A of the Act on the meaning of work (see paragraph 80). And paragraph 38 omits sections 44 and 45 which is consequential on new section 131A of the Act (see section 59 of this Act).

Paragraphs 9(6) and (8) and 10

Effect

1430 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.

1431 New section 6(5A) clarifies that transitional provisions can be included within notices approving Approved Documents, and the amendments to section 7 confirm which version of an Approved Document will be relevant to any legal proceedings, where there has been a revision.

1432 Under section 6(8), the appropriate national authority may designate a body for the purposes of approving documents by way of making an order. New section 6(5B) states that a designated body must now obtain the consent of the appropriate national authority before approving a document or a revised document, or withdrawing an approval.

1433 New section 6(9) confirms that an order designating a body may specify that the designated body may only issue or approve documents which relate to buildings of a prescribed description, work of a prescribed description or prescribed provisions of building regulations.

Background

1434 Approved Documents provide practical guidance on compliance with building regulations requirements. Currently there are Approved Documents to accompany each of the Parts of Schedule 1 to the Building Regulations (the functional requirements). No bodies are currently designated to approve documents.

1435 When changes are made to building regulations, a transitional period is usually provided to enable persons carrying out the work to become familiar with the new requirements.

1436 Section 7 provides that failure to follow guidance in an Approved Document can be relied upon as tending to establish liability if a contravention of building regulations' requirements is alleged and conversely proof of following guidance in Approved Documents can be taken as tending to negative liability.

Example

The Secretary of State decides to designate the Building Safety Regulator as the body to approve documents to give guidance on Part B (fire safety) for the purposes of the building regulations in England. The Secretary of State must make an order to this effect (which is a statutory instrument). If there were some revisions that needed to be made to the guidance on Part B, the Building Safety Regulator will first need to 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 in England. The Secretary of State would like the Building Safety Regulator only to 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 can approve documents in relation to A1 (loading) but not A2 (ground movement).

Paragraphs 11(4), 12(3)- (5), 13(4), and 18

1437 Paragraph 11(4) inserts 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 12(3)-(5) and 13(4) make consequential amendments to sections 9 and 10 of the Building Act 1984, which set out procedural requirements relating to the making and granting of applications for dispensations or relaxations. Paragraph 18 makes a consequential amendment to section 15 of the Building Act 1984.

Background

1438 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 relaxations of building regulations' requirements. It also allows building regulations to enable local authorities to exercise this power (which has been done through Regulation 11 of the Building Regulations 2010).

Paragraph 14(3)(a), 14(4)(a), 14(5), 14(6) and 14(8)

Effect

1439 This paragraph amends the existing powers in section 11 of the Building Act 1984 which deal with the relaxation of building regulations.

1440 The amendments made by paragraph 14(3)(a) and (4)(a) allow for an application to be made for a direction to vary or revoke a direction under section 11(1) (at present an application can only be made for a direction under section 11(1)).

1441 Paragraph 14(5) inserts new subsections (3A) to (3C) into section 11. New subsection (3A) allows the regulator to make proposals to the Secretary of State for the giving of a direction under section 11.

1442 New subsection (3B) provides that before making proposals to the Secretary of State, the regulator must consult such persons as it considers appropriate. Where the regulator proposes a direction to vary or revoke a section 11(1) direction, and the section 11(1) direction was given on application, the regulator must also consult the original applicant.

1443 New subsection (3C) provides that where the Secretary of State proposes to give a direction of his or her own accord, he or she must first consult the regulator, the original applicant (where the proposal is to vary or revoke a section 11(1) direction and that direction was given on application) and such other persons as he or she considers appropriate.

1444 Paragraph 14(6) inserts new subsections (4) and (5). New subsection (4) makes provision for consultation by the Welsh Ministers before they issue a direction. New subsection (5) confirms that a direction by the appropriate national authority must be published.

1445 Paragraph 14(8) changes the reference in section 11 to 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 section 33.

Background

1446 Under section 11 the appropriate national authority may either on application or of its own accord, make a direction to dispense with or relax a requirement of building regulations as regards a particular type of building matter, if the requirement is deemed to be unreasonable.

Example 1

The regulator considers that the Secretary of State should give a direction to relax the application of specific building regulatory requirements to a particular building matter in England, as it would be unreasonable for them to apply. Before making the proposal, the regulator considers it appropriate to consult with the Building Advisory Committee. Having consulted, the regulator proceeds to make the proposal. The Secretary of State considers the regulator's proposal to be appropriate and gives the direction.

Example 2

The Secretary of State of his or her own accord wishes to give a direction to relax the application of specific building regulatory requirements to a particular building matter in England, as it would be unreasonable for them to apply. The Secretary of State first consults with the regulator and considers it appropriate to also consult with the Building Advisory Committee and external stakeholders. Having consulted on the matter, the Secretary of State considers it appropriate to give the direction and proceeds to do so.

Example 3

The regulator wishes to make a proposal to the Secretary of State to revoke a direction relaxing the application of building regulatory requirements to a building matter in England. The direction was originally granted by the Secretary of State on application by an individual. The regulator consults with the original applicant and considers it appropriate to also consult with the Building Advisory Committee and external stakeholders. Having consulted, the regulator proceeds to make the proposal. The Secretary of State considers the proposal made by the regulator and decides to give the direction.

Paragraph 15(5)(b), (6), (7), (8), (10)

Effect

1447 This paragraph amends the existing powers in section 12 of the Building Act 1984 which deal with approving types of building matters.

1448 Paragraph 15(6) and (7) amends section 12 to allow for the appropriate national authority to revoke a certificate issued under section 12(3) on application (at present there is no option for a person to make an application for revocation of a certificate).

1449 Paragraph 15(8) inserts new subsections (8A)-(8D). New subsection (8A) allows the regulator to make proposals to the Secretary of State for approvals to be given, and for approval certificates to be varied or revoked under sections 12(6) and 12(8), in England.

1450 New subsection (8B) provides that before making a proposal to the Secretary of State, the regulator must consult with such persons as it considers appropriate. If the proposal is to vary or revoke a certificate issued on an application under subsection (1), the regulator must also consult with the original applicant.

1451 New subsection (8C) provides that before giving an approval or varying or revoking a certificate under this section, unless acting on a proposal of the regulator, the Secretary of State must consult with the regulator and any other person the Secretary of State considers appropriate. Before varying or revoking a certificate issued on an application under subsection (1), the of Secretary of State must also consult with the original applicant.

1452 New subsection (8D) preserves the current consultation requirements for the Welsh Ministers.

1453 Paragraph 15(5)(b) makes a minor change consequential on the subsections described above.

1454 Paragraph 15(10) changes the reference in section 12 to 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 section 33.

Background

1455 Under section 12 the appropriate national authority may approve a particular type of building matter as complying with requirements of the building regulations, either on application or of its own accord.

Example 1

The regulator decides to make a proposal to the Secretary of State for the approval of a particular building matter as being compliant with relevant building regulatory requirements in England. Before making proposals to the Secretary of State, the regulator considers it appropriate to consult with the Building Advisory Committee and external stakeholders. Having consulted, the regulator proceeds to make the proposal. The Secretary of State reviews the proposal and issues a certificate approving the matter.

Example 2

An individual makes an application to the Secretary of State to vary an approval certificate that was issued on application. The Secretary of State consults with the regulator and the original applicant and considers it appropriate to also consult with the Building Advisory Committee. Having consulted, the Secretary of State decides to vary the certificate and publishes a notice of the variation.

Paragraph 17

Effect

1456 Section 9 abolishes the Building Regulations Advisory Committee for England (BRAC) as established under section 14 of the Building Act 1984. This paragraph repeals subsections 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.

1457 Paragraphs (3) and (4) make minor amendments to the requirements for Welsh Ministers to consult the Building Regulations Advisory Committee for Wales (BRACW).

1458 Other requirements for consultation are set out in new sections 120B and 120C of the Building Act 1984 (see paragraph 77).

1459 This paragraph also inserts the heading "Wales" above remaining subsections (5)-(8), which deal with the establishment of BRACW, and which are not being repealed.

Paragraphs 19, 21(3)-(5), 22(3)-(6), 23(3)-(4), 24(3), 26(3)-(4), 27(3)-(5), 29, 32(4)(b)-(e), 32(6)(d), 40(2), 41(3)(a)-(c), 42(2), 43(a)-(c), 46(3), 55(3)

1460 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 section 33 of the Act. New paragraphs 1A and 1B will be used to make building regulations to set out new requirements for applications, including applications for building control approval which will replace current arrangements for the deposit of plans of building work. These amendments replace references to the deposit of plans with references to the making of applications for building control approval or make similar consequential amendments.

Paragraphs 20, 28, 79

1461 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 section 33. New paragraphs 1A and 1B contain powers for building regulations to set new requirements for applications, including applications for building control approval, which will replace current arrangements for the deposit of plans of building work, and for the approval of changes to the work covered by the original building control approval. New paragraph 1C provides powers for building regulations to make provision about the giving of certificates.

Background

1462 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.

Paragraph 30(2)-(3)

Effect

1463 This paragraph amends section 33 of the Building Act 1984 to specify that tests carried out, or required to be carried out, by building control authorities can be carried out not just in connection with the work, but also the building on which the work is to be carried out. Further, the paragraph inserts new subsection (3A) to specify that the tests may involve the cutting into or laying open of work or buildings, or the pulling down of work.

Background

1464 Section 33 makes provision to enable building control authorities to require persons undertaking work to carry out tests, or to carry out tests themselves of building work or conformity with building regulations' requirements.

Paragraphs 31, 45 and 86

1465 Paragraph 31 repeals section 35A of the Building Act, which is no longer needed as the section 35 offence as substituted by section 39 is triable either way and therefore not subject to the time limits on bringing prosecutions in summary-only offences, to which section 35A makes an exception.

1466 Paragraphs 45 and 86 consequentially repeal subsections (6) and (6A) of section 53 and paragraph 4(6) of Schedule 4 to the Building Act 1984.

Paragraphs 32(3), (4)(a), (5), (6)(a) and (c)

1467 Paragraph 32(3) amends section 36 of the Building Act 1984 (which creates a power for building control authorities to require rectification of non-compliant work) to mirror the expansion of the offence in section 35 to cover requirements imposed under building regulations as well as building regulations themselves.

1468 Paragraph 32(4)(a) is a tidying-up amendment which reflects the correct legal position.

1469 Paragraph 32(5) ensures that the protection against enforcement in section 36(5) will not apply in respect of higher-risk building work. It also confirms that the protection only applies where the work is done in accordance with agreed plans and requirements imposed by the building control authority, including requirements imposed under sections 19-25 of the Building Act 1984 (which are the only sections of the Act under which the building control authority can impose requirements upon granting building control approval).

1470 Paragraph 32(6)(a) is a minor amendment consequential on new sections 35B and 35C (compliance and stop notices).

1471 Paragraph 32(6)(c) is a minor amendment which provides that certain provisions of the Building Act 1984 do not affect the right of the Counsel General to the Welsh Government to apply for an injunction on the ground that any work contravenes provision made by or under that Act.

1472 The paragraph also makes a number of changes to terminology to reflect new terminology which will be used elsewhere in the Act, e.g. replacing "deposit of plans" with "application for building control approval".

Paragraphs 36 and 52

1473 These paragraphs clarify that the ability to appeal a decision of a magistrates' court to a Crown Court covers decisions relating to provisions in regulations made under the Building Act 1984 as well as the Act itself.

Paragraphs 40(3) and 42(3)

1474 These paragraphs are consequential to new section 101A "Appeal: refusal to consider application etc on ground is higher-risk building work" which is inserted by paragraph 30 of Schedule 6. Further detail is provided in the explanatory note for that paragraph.

Paragraph 41(2)(a)

1475 The amendment set out in paragraph 42(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, inserted by section 38. Protection against prosecution under section 35 remains as at present, in section 48(1)(b).

Paragraphs 41(3)(d), 43(d)

1476 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 section 36.

Paragraph 44(3)

1477 Paragraph 45(3) amends section 52 of the Building Act 1984, consequential on the insertion of new section 52(5A) by section 50(5).

Paragraph 47

1478 Paragraph 47 amends section 56(3) of the Building Act 1984 and is consequential on the repeal of section 16 of the Building Act 1984 (provided for by paragraph 20 of Schedule 5 to this Act).

Paragraph 48(2)

1479 This paragraph amends section 57 of the Building Act 1984 to specify that the offence of giving a notice or certificate that purports to comply with certain requirements but is false or misleading covers notices or certificates given under building regulations, which have been designated for the purposes of section 57.

Paragraph 48(3)

1480 This paragraph reflects the abolition of the statutory maximum for summary fines by section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Paragraph 51

1481 This paragraph amends section 78(7) of the Building Act 1984 on emergency measures for dangerous buildings to remove the reference to subsection (3) of section 106. This subsection concerns disputes in regard to compensation, and has been removed (see paragraph 67 below).

Paragraph 54

1482 This is a minor amendment consequential on the changes to section 91 in section 32 .

Paragraphs 55(6) and 57(3)(b)

1483 These paragraphs are consequential to the insertion of new section 120A into the Building Act (see paragraph 77).

Paragraph 56

1484 New section 91B sets out cooperation requirements for specified functions of Welsh Ministers, Welsh fire and rescue authorities, fire inspectors (as defined within this section) and local authorities in Wales.

1485 New section 91B also creates information sharing gateways between Welsh Ministers, local authorities in Wales, fire inspectors and fire and rescue authorities in Wales for the listed functions, and a power for the Welsh Ministers to expand the list of functions (in relation to local authorities and fire and rescue authorities) in building regulations.

1486 91B(8)-(9) mirror the equivalent provision for England (see section 27).

Paragraphs 58 and 59

1487 These paragraphs amend the provisions in section 94 of the Building Act 1984 dealing with service of documents under that Act to modernise the provision, provide for service on an authorised officer of the regulator, and to make clear that electronic service of documents by email is acceptable when both parties have agreed to that.

Paragraph 60

Effect

1488 This paragraph amends section 95 of the Building Act 1984 in line with paragraph 3 of Schedule 2 to this Act, in that it requires a local authority building control officer to obtain a warrant from a justice of the peace before making entry without consent to premises that are wholly or mainly used as a private dwelling.

Background

1489 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 justice of the peace, or the occupier consents. This provision, together with paragraph 3 of Schedule 2 to this Act, provide for that in respect of the functions in the Building Act 1984 and this Act.

Paragraph 67

1490 This paragraph amends section 106 of the Building Act 1984 to remove the ability to go to a magistrates' court to have compensation determined where the compensation figure does not exceed £50.

Paragraph 72

Effect

1491 This paragraph amends section 112 of the Building Act 1984 in line with section 23 of this Act, 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 section 23.

Background

1492 This paragraph, along with section 23, 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 current 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 section 23, hence this provision increasing it accordingly.

Paragraph 73

1493 This paragraph allows the Building Safety Regulator in England and Welsh Ministers and the Counsel General in Wales to prosecute offences under the Building Act 1984 in the same way as a local authority.

Paragraph 74

1494 This paragraph amends section 119 of the Building Act 1984 to enable the Building Safety Regulator as well as the Secretary of State in England, and Welsh Ministers in Wales, 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.

Paragraphs 75, 76(2)-(3)(a), 77, 85

Effect

1495 Paragraph 77 inserts new sections 120A, 120B and 120C (as to which see below) into the Building Act. New section 120A sets out provision for regulations made under the Building Act which are not building regulations. These can be made by the appropriate national authority (the Secretary of State in England and Welsh Ministers in Wales) in most cases, although a few are England-only or Wales-only (see the explanatory notes for the sections in question). Regulations to which this section applies are those made under sections 54A, 55, 56A, 56B, 90A, 91A, 92, 105B, 105C, 120D, 120I and 125A.

1496 Subsection (2) of new section 120A allows regulations to include incidental, transitional or savings provisions, and for those regulations to make different provision for different purposes or different areas. Subsection 3 mirrors provision in section 34 of the Building Act 1984 to confirm the various ways in which buildings can be categorised in regulations.

1497 Subsections (4) and (5) allows for regulations made under sections 54A and 90A to make consequential amendments to the Building Act.

1498 Subsections (7) and (8) set out the procedures for regulations applying to England in the Houses of Parliament. Regulations made pursuant to new sections 54A, 90A, 105C, 120D(2)(b), 120D(4)(c), 120D(6) or 125A will be made using the affirmative procedure. Other regulations will use the negative procedure.

1499 Subsections (9) and (10) set out the procedures for regulations applying to Wales in Senedd Cymru. Regulations made pursuant to new sections 54A, 120I(2) or 125A will be made using the affirmative procedure. Other regulations will use the negative procedure.

1500 Paragraphs 75 and 76 make minor and consequential changes to section 120 of the Building Act 1984.

1501 New section 120B gives the Building Safety Regulator the ability to suggest proposals to the Secretary of State for the making of regulations under the Building Act, including building regulations, applying to England. It requires the Building Safety Regulator to consult with persons that it considers appropriate before making a proposal to the Secretary of State.

1502 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.

1503 This mirrors section 7 which deals with regulations under Parts 2 and 4 of the Act. As with that section, it does not apply to regulations dealing with the scope of the higher-risk regime, as they have their own procedure (see new section 120E, inserted by section 31).

1504 Paragraph 85 is a consequential amendment to Schedule 3 of the Building Act 1984.

1505 New section 120C sets out that, before making any regulations under this Act except building regulations (which are dealt with in section 14) or regulations under section 120I, Welsh Ministers must consult such persons as they consider appropriate. Before making regulations under section 120I, Welsh Ministers must consult the Building Regulations Advisory Committee for Wales, and any other person that the Welsh Ministers consider appropriate.

Background

1506 Although most of the secondary legislation made under the Building Act will be building regulations, there will be some which will not because their subject matter does not fall within the scope of building regulations. These are regulations on public bodies and higher-risk building work (section 54A); establishment of registers (sections 55, 56A, 56B and 91A); certain appeals (section 55); the allocation of functions under Part 3 of the Building Act 1984 (section 90A); forms of notices or other documents (section 92); fees and charges because

these may cover functions under the Act which do not relate to building regulations (section 105B); the imposition of a levy (section 105C); the meaning of higher-risk building in the Building Act (section 120D for England and section 120I for Wales); and the meaning of work in the Building Act 1984 (section 125A).

1507 New section 120B replaces sections 14(3) and (4) of the Building Act 1984 which previously set out requirements for consultation on proposals for building regulations in England.

> ### Example
> 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 are appropriate, such as the public and external stakeholders. Once the Secretary of State has consulted with the Building Safety Regulator and appropriate persons, they may then make the regulations.

Paragraph 78(3)

1508 This paragraph amends section 121 of the Building Act 1984, consequential to new section 120D of the Building Act, inserted by section 31, which defines a higher-risk building in England (section 120D) and in Wales (section 120I). Section 121 includes a broad definition of a building and paragraph 78(3) provides that this has no effect in relation to sections 120D and 120I, to avoid any confusion between the definitions.

Paragraph 80

Effect

1509 Paragraph 80 inserts a new section 125A into the Building Act. Section 125A(1) makes clear that where the term "work" is used in the Act, this encompasses a material change of use, other than for a few exceptions. This gloss on the term "work" already appears in a number of places in the Act (see, for example, section 58(2)). Section 125A consolidates these existing glosses, which will be repealed as a consequence, and extends the gloss to a few additional and new provisions in the Act. New section 125A(1) provides powers to set out in building regulations exactly what is to be encompassed within a change of use; this replicates the existing power in paragraph 8(1)(e) of Schedule 1. The exceptions to the gloss, which are listed in new section 125A(3) cover provisions in the Act where it is clear that the term "work" is not intended to, or cannot, because of the context, include a change of use.

1510 New section 125A(2) provides reserve powers for regulations to prescribe other matters which might be covered by the term "work" in the provisions in subsection (3). This is because there may be circumstances where the Act and building regulations should apply but which may not fall within a common understanding of the term "work", for example, because physical work may not be involved, such as change to energy status (see Regulation 22 of the Building Regulations 2010). These regulations will be subject to the affirmative procedure.

Background

1511 There are a number of references in the Building Act to work including a material change of use, as described above. The intention with new section 125A is to have a single provision covering this matter for the Act as a whole.

1512 Regulation 5 of the Building Regulations 2010 sets out the specific operations which are currently covered by the term "material change of use".

Paragraph 81

1513 This paragraph inserts new definitions into section 126 of the Building Act 1984 ("General interpretation"), and removes the definition of "relevant period" consequential to the repeal of section 16.

Paragraph 76(3)(b)-(c), 82

1514 Paragraph 82 provides, subject to some exceptions, that the power to make commencement orders in relation to Wales under the Building Act 1984 sits with Welsh Ministers.

1515 Paragraph 76(3)(b)-(c) makes consequential amendments to section 120.

Paragraphs 83(3), (5)-(8)

1516 This paragraph makes amendments to Schedule 1 of the Building Act 1984:

- consequential to the taking of new powers in sections 32 and 56 (subparagraphs (3), (5) and (7));
- consequential to the definition of work in new section 125A (subparagraph (6)(a));
- to enable building regulations to set requirements related to the conservation of fuel and power for buildings of a prescribed description (subparagraphs (6)(b) and (c)); and
- to clarify that building regulations may include supplementary, incidental, transitional, transitory and saving provisions, and may make different provision for different purposes or areas, including different provision for higher-risk buildings and higher-risk building work (subparagraph (8)).

Paragraphs 87, 88

Effect

1517 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

1518 The establishment of the new Building Advisory Committee has resulted in the abolition of the Building Regulations Advisory Committee for England. In line with this, provisions within the Building Act 1984, Parliamentary Commissioner Act 1967 and Freedom of Information Act 2000 which make reference to BRAC are removed by these paragraphs.

1519 BRAC was subject to the Freedom of Information Act 2000 in its own right. This paragraph repeals the reference to BRAC in Part VI of Schedule 1 to the Freedom of Information Act 2000. BRAC was also subject to oversight from the Parliamentary Commissioner for Administration, under the Parliamentary Commissioner Act 1967. This paragraph repeals the reference to BRAC in Schedule 2 to that Act.

1520 As the Building Advisory Committee is part of the Health and Safety Executive, it will be subject to the Freedom of Information Act 2000 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 89

1521 This paragraph repeals subsections (8) and (9) of section 3 and subsection (4) of section 4 of the Sustainable and Secure Buildings Act 2004, consequential to new section 125A of the Building Act and to the omission of section 44 and 45 of the Building Act 1984 (see paragraph 38 of Schedule 5 to the Act).

Paragraph 90

1522 This paragraph repeals article 45 of the Fire Safety Order and makes a consequential amendment to article 52(1).

Background

1523 Article 45 of the Fire Safety Order requires local authorities to consult Fire Safety Order enforcing authorities before approving plans of building work deposited with them.

Example

New paragraph 1A of Schedule 1 to the Building Act, inserted by section 33, provides powers for building regulations to prescribe arrangements for prescribed bodies such as Fire Safety Order enforcing authorities to be consulted by prescribed bodies such as building control authorities. The requirements of article 45 will be replaced by new building regulations which will set out required consultation arrangements between building control authorities and Fire Safety Order enforcing authorities.

Schedule 6: Appeals and other determinations

1524 This Schedule contains amendments to the Building Act 1984 that relate to appeals and other determinations.

Effect

1525 This Schedule largely transfers appeals and determinations in the Building Act 1984 in England from the Secretary of State to the Building Safety Regulator or First-tier Tribunal, and from the magistrates' court to the First-tier Tribunal.

1526 This is to align the appeals procedure for all building control decisions in England to sit with the Tribunal, and to accommodate the Building Safety Regulator's position as a new building control authority and oversight body for other building control bodies.

1527 The First-tier Tribunal has expertise in 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.

1528 Accordingly, following discussion with the Ministry of Justice and the Tribunal, we are amending the Building Act 1984 as follows.

1529 Paragraphs are grouped together where they have similar effects.

Effect in Wales

1530 The Schedule will apply in Wales. Appeals against certain decisions by local authorities in Wales are to Welsh Ministers. References to Secretary of State now read as Welsh Ministers, and appeal references to magistrates' court remain.

Paragraph 2 – amendment of section 10(6)

1531 This paragraph sets out that copies of representations should be sent to the Building Safety Regulator where a local authority in England refuses an application for relaxation and an appeal is brought against that refusal. Copies of representations should continue to be sent to the Welsh Ministers in Wales.

Paragraph 3 – amendment of section 20

1532 This paragraph sets out that any appeal of local authority action in England 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 further appeal will go to the First-tier Tribunal.

1533 Any appeal of the Building Safety Regulator's action under this provision must be lodged with the First-tier Tribunal in the first instance.

1534 Appeals will continue to be to the Welsh Ministers in Wales.

Paragraph 4 – amendment of section 39

1535 This paragraph sets out that any appeal of local authority action in England 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 further appeal will go to the First-tier Tribunal.

1536 Any appeal of the Building Safety Regulator's action under this provision must be lodged with the First-tier Tribunal in the first instance.

1537 Appeals will continue to be to the Welsh Ministers in Wales.

1538 Subsections (3) to (6) of section 39 are consequentially omitted.

Paragraph 5 – amendment of section 42

1539 This paragraph amends section 42 in regard of appeals under section 20, 39 and 50 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.

1540 The paragraph inserts a new subsection (A1) permitting appeals to the High Court on points of law in regard of Secretary of State decisions on relaxations of building regulations; this merely replicates the current position. The right of appeal is extended to applicants, local authorities, and registered building control approvers.

1541 Appeals will continue to be to the Welsh Ministers in Wales.

Paragraphs 6 & 7 – amendment of section 43 and insertion of new s43A

1542 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).

1543 New s43A makes provision for the Building Safety Regulator or First-tier Tribunal, when determining an appeal under those sections, to give any directions it considers appropriate for giving effect to its ruling. It also confirms that where the Regulator determines an appeal in the first instance, that decision may be further appealed to the First-tier Tribunal.

Paragraph 8 – amendment of section 50

1544 This section will allow an appeal to the Building Safety Regulator where a registered building control approver (formerly known as an Approved Inspector) has refused to give a plans certificate. This replaces the existing determination process.

1545 Appeals under new subsection (2) of section 50 in Wales will go to the Welsh Ministers.

Paragraph 9 – transfer from magistrates' court to the tribunal in England

1546 This paragraph transfers functions as above as listed in paragraph 9, Schedule 6.

Paragraphs 10 – 28

1547 These paragraphs insert "or tribunal" after "court", "a court", or "the court", and make similar consequential amendments, to accommodate the redirection of appeals and other decisions to the First-tier Tribunal in England.

Paragraph 29 - new section 105A, Enforcement of decisions of the First-tier and Upper Tribunal

1548 This is a new section that enables enforcement of Tribunal decisions, such that any decision of the First-tier or Upper Tribunal under or in connection with the Building Act 1984, other than a decision ordering the payment of a sum (which is dealt with separately under the Tribunals, Courts and Enforcement Act 2007), is to be enforceable with the permission of a county court in the same way as orders of a county court.

1549 Please also see note for section 107, which makes similar provision for decisions under or in connection with Part 4 of the Building Safety Act.

Paragraph 30 – new section 101A, Appeal: refusal to consider application etc on ground is higher-risk building work

1550 Under the new regulatory regime in England, the Building Safety Regulator will act as the building control authority for higher-risk buildings during construction, responsible for checking building work and verifying that it complies with regulations. Local authority building control, or registered building control approvers (formerly known as Approved Inspectors), will be the building control authority for buildings out of scope of the regime. In Wales, the local authority or designated local authority (under new section 91ZD, in section 32) will be the building control authority for higher-risk buildings.

1551 The definition of higher-risk buildings in England for the purposes of the Building Act 1984 is set out in section 31, with further detail to be set out in secondary legislation. It will cover multi-occupied residential buildings, care homes and hospitals of 18 metres or more in height or at least seven storeys (whichever is reached first). Detailed guidance will be issued to help developers understand the scope of the regime, assess whether their building falls into the definition and therefore who the correct building control authority will be. New section 120I, in the same section, confers power on the Welsh Ministers to define "higher-risk building" for Wales.

1552 There may be cases where a developer submits their application for building control approval to local authority building control or where a developer submits an initial notice or amendment notice to their local authority when the development may be in scope of the new regulatory regime. The local authority has the power to refuse to consider the building control application (in England) or an initial notice / amendment notice (in both England and Wales) 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 authority (in England) or the local authority is the building control authority (in Wales). This section 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, to the Secretary of State (in England) or Welsh Ministers (in Wales), should they think that their building is not in scope of the regime. The appeal process will be set out in secondary legislation made under this section.

1553 The appellant can appeal to the High Court from the decision of the Secretary of State or Welsh Ministers on a point of law.

1554 Paragraphs 39(3) and 41(3) of Schedule 5 to the Act are consequential to this provision and make 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 registered building control approver wrongly submits such a notice then the default deemed acceptance rules in section 47(3) and section 51A(5) of the Building Act do not apply.

Example

The design, construction and refurbishment elements of the new regulatory regime will apply to ”higher-risk buildings”, defined as multi-occupied residential buildings, care homes and hospitals of 18 metres or more in height or at least seven storeys (whichever is reached first).

A developer in England 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 figure out who the building control authority will be.

The developer considers whether their building is a ”higher-risk building”. In this example, the developer has identified that the building has six storeys, which are all above ground level, 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 local authority building control.

Upon considering the building control application, the local authority assesses that the floor area of the mezzanine level in the building is over 50 percent of the floor area of the largest storey of the building and therefore counts as another storey. 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 to 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 may be appealed to the High Court on a point of law only.

If it is determined on 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: Special Measures

Paragraph 1: Introductory

1555 This paragraph is an introductory one and sets out the definitions of "special measures manager" and "special measures order" for this schedule.

Paragraph 2: Notification by regulator before applying for special measures order

Effect

1556 This paragraph sets out the procedure that the Building Safety Regulator must follow before applying for a special measures order.

1557 The Building Safety Regulator must notify persons, with information as set out in paragraph 2(3), that it proposes to put the building into special measures and intends to apply to the First-tier Tribunal to appoint a Special Measures Manager to carry out functions in place of any Accountable Person in the building.

1558 Paragraph 2(4) and (7) set out that where applicable, the notices must also include a copy of a financial management proposal for cases where payments need to be made to the Special Measures Manager by the Accountable Person. These notifications will be in the form of an initial notice and then a final notice - once a decision has been made. The initial notice will set out the proposed terms of the draft order and give reasons for the proposed application and allow a period in which representations from recipients can be made.

1559 Paragraph 2(2) and (4) set out that the Building Safety Regulator must give initial and final notices of the proposal to the following persons listed below:

- Each Accountable Person for the building;
- Each resident aged 16 year or older of the building;
- Each owner of a residential unit in the building;
- Any managing agent of the building in scope, or any part of it;
- A recognised tenants' association for the building, as defined by s.29 of the Landlord and Tenant Act 1985;
- A manager appointed under s.24 of the Landlord and Tenant Act 1987;
- The fire and rescue authority for the area in which the building is situated;
- The local housing authority for the area in which the building is situated;
- The regulator of social housing (if the Accountable Person is a registered provider); and
- Where the building is in mixed use, the Responsible Person under the Regulatory Reform (Fire Safety) Order 2005, of that part of the building which is occupied for business purposes.

1560 Paragraph 2(12) gives a power to the Secretary of State to amend the list of persons detailed above by way of regulations.

1561 Paragraph 2 specifies the content that must be included in the notice, including the way in which persons can submit comments and observations, to the Building Safety Regulator about the proposals for special measures. The Building Safety Regulator must then decide whether to make the application to the First-tier Tribunal and communicate its final decision with those persons it notified of its intention to do so. The Building Safety Regulator must comply with paragraph 2 (5) to (7) before making an application for a special measures order. These sub-paragraphs require that the Building Safety Regulator must decide whether to make an application for special measures and give final notice of that decision, together with any financial management proposal. That notice must also include the reasons for its final decision and, if necessary, also set out the final terms of the proposed special measures order which the Tribunal will be asked to make.

1562 Paragraph 2(9) provides that with regard to the duties under sub-paragraph (2), (4), (5)(b) or (7), the Building Safety Regulator only has to notify those it has knowledge of and has taken reasonable steps to make itself aware of.

1563 Paragraph 2(10) clarifies references made in Paragraph 2 on the meaning of "relevant part" and "financial management proposal"

1564 Paragraph 2(11) gives the power to the Secretary of State to make provisions in regulations about the form of the notices and the way in which the notices must be given.

1565 The circumstances in which a Special Measures Manager can be appointed and the functions they can be given are set out in paragraph 4.

Background

1566 Where the Building Safety Regulator proposes to apply to the First-tier Tribunal to intervene with the Accountable Person's management of their building, procedural fairness dictates that affected parties should have the opportunity to make comment and provide representations. The paragraph ensures that the Building Safety Regulator discharges its power to apply for a special measures order in a fair and transparent way.

Example

The Building Safety Regulator deems that a rented block should be placed in special measures after contravention by multiple Accountable Persons of two or more duties under part 4 of the Act. After taking successive enforcement measures against the Accountable Persons, it is of the opinion that the breaches put the safety of residents in the building at risk and notifies the Accountable Person and other persons that it will apply to the First-tier Tribunal for the appointment of a Special Measures Manager. The notice sets out details of the reason for the application along with the identity of the Special Measures Manager. It provides information about the proposed terms of the special measures order, how representations can be made by parties and provides a financial management proposal. The proposal sets out the estimated expenses in relation to the functions to be undertaken, estimates of fire safety works to be carried out on the block, detailing how they costs will be apportioned between the multiple Accountable Persons. The time limit for making such representation expires and the Building Safety Regulator still judges that the fire and structural safety of the building is compromised. It therefore applies to the First-tier Tribunal for a special measures order to be made, and notifies the specified persons concurrently of this decision, providing a final version of the proposed order and financial management proposal.

Paragraph 3: Meaning of "financial management proposal"

Effect

1567 Paragraph 3 defines the meaning of financial management proposal for the purposes of the special measures regime.

1568 The financial management proposal is document that will include an estimate of the relevant expenses to be incurred by the Special Measures Manager and recovered from the Accountable Person(s).

1569 Paragraph 3(1) sets out provisions that need to be included within a financial management proposal. These are estimates of relevant expenses and a reasonable amount for contingency costs, what measures they relate to and any apportionment of expenses, with the rationale for this, between multiple Accountable Persons.

1570 Paragraph 3(2) defines "relevant expenses" in relation to a financial management proposal under the special measures regime.

Background

1571 Providing a financial management proposal with the notice and draft terms of a special measures order provides clarity to interested parties from the outset where the Building Safety Regulator is proposing to put a building into special measures.

1572 The financial management proposal informs the directions that the First-tier Tribunal will make in the special measures order in respect of payments due from the Accountable Persons to the Special Measures Manager for a building being put into special measures as well as reasonable contingency costs for both.

Paragraph 4: Special measures order

Effect

1573 Paragraph 4 provides that the First-tier Tribunal may appoint a Special Measures Manager, for an occupied higher-risk building, further to an application made by the Building Safety Regulator.

1574 Paragraph 4(2) sets out that functions of all accountable persons will be conferred upon the appointed Special Measures Manager for the building i.e., the functions under Part 4 of the Act or regulations made under it.

1575 Paragraph 4(3) makes provision for the appointed Special Measures Manager to carry out any function as a receiver of the commonhold building safety assessments, to enable it to fund and carry out the functions which it has been given under the order for a commonhold building in special measures.

1576 Paragraph 4(4) sets out the grounds on which the First-tier Tribunal must be satisfied before making an order appointing a Special Measures Manager and also the grounds on which the Building Safety Regulator would use to apply for such an order.

1577 Paragraph 4(5) gives the First-tier Tribunal the powers to include in an order details of payments which need to be made by an Accountable Person to the Special Measures Manager in relation to relevant expenses incurred or due to be incurred by the manager for the building, with paragraph 4(6) setting out that this does not apply to commonhold buildings. This paragraph also provides that the tribunal may make provision in the order for any other matter relating to the exercise of the Special Measures Manager's functions and any incidental/ancillary matters can be included by the Tribunal in the order.

1578 Paragraph 4(7) provides that a special measures order remains in place until it is discharged. This would be done by way of application to the First-tier Tribunal.

1579 Paragraph 4(8) sets out the definition of "commonhold building safety assessment" for Part 4 of the Act. It has the same meaning as in section 38A of the Commonhold and Leasehold Reform Act 2002.

Background

1580 The Independent Review recommended that there needs to be a regulator in relation to fire and structural safety of a residential building in occupation who can hold duty-holders to account with robust sanctions where necessary.

1581 The Government is going further and introducing a special measures manager who would take on the management of risks in a building as a last resort, where the Building Safety Regulator is successful in an application for an order where the grounds are made out in so as to keep residents safe from that poor management of building safety risks.

Example

An Accountable Person repeatedly fails to meet the statutory obligations under Part 4 of the Act, and after using the compliance and enforcement tools at its disposal, the Building Safety Regulator is of the opinion that the safety of the residents is at risk and applies to the First-tier Tribunal for an order to appoint a Special Measures Manager. The special measures order details the identity of the Special Measures Manager, the scheme and terms of management, including any payments to be paid by the Accountable Person further to the financial management proposal and specific functions that the Special Measures Manager would undertake to meet the statutory obligations under Part 4. In making the order, the First-tier Tribunal appoints the Special Measures Manager who takes on the functions of all the Accountable Persons in the building and specifies the amounts to be paid across by each of them in relation to discharging its obligations in special measures.

Paragraph 5: Special measures order: supplementary

Effect

1582 Paragraph 5 supplements provisions regarding special measures orders to appoint Special Measures Managers under paragraph 4.

1583 The paragraph provides that the functions given to Accountable Persons by Part 4 of the Act, or regulations under it, are to be treated as a function of the Special Measures Manager for the building, except any function in relation to the making of an application to or an appeal to the tribunal.

1584 The special measures order made cancels the requirement set out in any unexpired compliance notices issued in respect of the building, once in effect. The Accountable Person remains liable for the breaches of any compliance notices contravened before the special measures order is made.

Paragraph 6: Payments received by special measures manager to be held on trust

Effect

1585 Paragraph 6 supplements provisions set out in relation to financial management proposals by mandating the way in which Special Measures Managers must hold payments from Accountable Persons.

1586 Paragraph 6(2) sets out that the payments must be held in one or more trust funds as required.

1587 Paragraph 6(3) further details that the purpose of the fund is to pay out against any relevant expenses related to the order and to, subject to that, to hold any monies on behalf of the Accountable Person or Accountable Persons.

1588 Paragraph 6(4) provides that any remaining fund or funds following the payment of relevant expenses under a special measures order are to be distributed to the relevant Accountable Person or Persons. If there are multiple Accountable Persons , this subparagraph provides for distribution of the residue of the funds in accordance with any agreement in writing or otherwise as per the directions of the Tribunal.

1589 Paragraph 6(5) states that the Regulator or the Accountable Person or the Special Measures Manager for the building will have the ability to apply for a direction, in the absence of agreement by all the Accountable Persons, on the re-distribution of the residual funds.

Background

1590 The purpose of this paragraph is to ensure financial propriety and that the Special Measures Manager holds payments from the Accountable Person in a designated bank account on trust to be used solely for relevant building safety expenses. Having a separate trust fund account will ensure that monies are carefully managed and transparently accounted for during the term of the special measures order.

> ### Example
> A high rise rented building becomes subject to a special measures order due to the failures by the Accountable Persons. Each Accountable Person has equal responsibility for the relevant parts of the common parts within the building. At the onset of the order the appointed Special Measures Manager sets up a single designated trust fund account for that building.
>
> All Accountable Persons pay their share, in equal measures, of the total payment as required by the order. This enables the Special Measures Manager to carry out the functions and terms under the order and to fund work required on the building. Following the completion of works, the building comes out of special measures and the residual balance of the trust account is distributed equally between all Accountable Persons, as agreed in writing between the parties.

Paragraph 7: Effect of special measures order on relevant contracts and legal proceedings

Effect

1591 Paragraph 7 enables the Special Measures Manager to take over relevant contracts that the Accountable Person has in place. So, the Special Measures Manager "steps into the shoes" of the Accountable Person for duration of the special measures order in relation to relevant contracts.

1592 Paragraph 7(3) sets out the criteria of when a contract is a "relevant contract" for the purposes of this paragraph and includes provision that to be a relevant contract it must be specified as such or fall within a description of contracts in the Special Measures Order. Sub-paragraph (3)(e) sets out that the special measures manager must also give notice to the

parties of the contract which it is assuming control over. This notice must state the relevant rights or liabilities of the contract which the manager is assuming control of (sub-paragraph (5)).

1593 Paragraph 7(4) sets out that a relevant right or liability that the Special Measures Manager can assume under a contract, is one that relates to a function of an accountable person for the building under Part 4 of the Act or regulations made under that Part.

1594 The special measures manager has the discretion to bring, continue or defend a cause of action as set out in paragraph 7(6).

1595 Paragraph 7(7) provides the circumstances in which a Special Measures Manager may rely on its right with regard to causes of action in paragraph 7(6). Namely, if a cause of action is accrued to or against the Accountable Person of the building before the special measures order is made; if it relates to a relevant function of the Accountable Person prior to the special measures order being made; if the cause of action is detailed in the special measures order pursuant to this paragraph; and if the requisite notice is given by the Special Measures Manager to any person that the manager considers would have an interest in the (paragraph 7(6)) cause of action.

1596 Where the Special Measures Manager for the building is liable to pay damages incurred prior to their appointment as a result of any act or omission by the Accountable Person, then the said Accountable Person is liable to reimburse the manager.

Background

1597 In the making of this provision, it is considered that it may be necessary for the Special Measures Manager to be able to take over contracts and liabilities of the Accountable Person, to enable it to effectively discharge the functions as set out in the special measure order. It allows them to recoup damages arising from breaches of contracts relating to the discharge of Part 4 functions, prior to a special measures order coming into effect and pursue third parties.

Example

The Special Measures Manager takes over a contract from the Accountable Person to pursue a claim against a third party in relation to contractual performance of services in relation to functions under Part 4 of the Act. The third party responds to the cause of action with a counter-claim. The counter-claim relates to the period prior to the special measures order coming into effect and is a contractual one against the Accountable Person in relation to its Part 4 functions. Nevertheless, the Special Measures Manager would need to pay any damages awarded to the third party against the Accountable Person, if the manager had taken over the contract subject to the counter-claim. Alternatively, if the manager's own claim is successful, the counterclaim may offset any damages award in the manager's claim. In either case, the Special Measures Manager would subsequently obtain reimbursement from the Accountable Person.

Paragraph 8: Special measures orders and orders under section 24 of the Landlord and Tenant Act 1987

Effect

1598 This paragraph gives a power to a First-tier Tribunal to amend an existing order to appoint a manager for a building made under section 24 of the Landlord and Tenant Act 1987. Section 24 gives certain tenants a right to apply for the appointment of a manager, in a number of circumstances, such as when the landlord has breached its obligations under the lease.

1599 In some buildings, where a Special Measures Manager is appointed, a section 24 order may already be in place. The paragraph prevents an overlap of the functions of the section 24 manager and the functions of the Special Measures Manager in the respective court orders. It gives precedence to any requirement on the Special Measures Manager to carry out a function pursuant to a special measures order, over a function of the section 24 manager.

1600 The First-tier Tribunal may amend the section 24 order to ensure that a manager appointed under section 24 is not required to perform functions that have been given to the Special Measures Manager (appointed under paragraph 5) in the same building.

Proposed use of power

1601 This power will ensure there is no overlap in functions of the two types of managers in situations where two separate managers have been appointed under both this Act and the Landlord and Tenant Act 1987, section 24.

Background

1602 This provision amends section 24 of the Landlord and Tenant Act 1987.

1603 Under section 24 of the Landlord and Tenant Act 1987, tenants 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. Paragraph 4 of this Schedule 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 in some circumstances.

1604 This paragraph will ensure that the First-tier Tribunal appointing a Special Measures Manager can amend an order made under section 24 of the Landlord and Tenant Act 1987 aligning the functions of this manager with that of the Special Measures Manager's function under the Building Safety Act.

> ### Example
> A circumstance may arise where an Accountable Person has repeatedly failed to fulfil their duties under Part 4 of this Act in relation to an occupied higher-risk building. The Building Safety Regulator applies to the First-tier Tribunal for a special measures order to appoint a Special Measures Manager for the building to ensure that the required building safety management functions are carried out. However, it transpires that an existing manager was appointed through a section 24 order and is carrying out functions which relates to the fire and structural safety of the building. In this circumstance, the First-tier Tribunal amends the section 24 order to exclude those fire and structural safety functions from the section 24 manager's role that have been incorporated into the Special Measures Manager's functions.

Paragraph 9

Effect

1605 Paragraph 9 amends the Landlord and Tenant Act 1987 ("LTA 1987") to align it with requirements of the Building Safety Act, by inserting new text as section 24ZA. This will enable the special measure provisions of the Act to operate effectively with the existing landlord and tenant legislation for occupied higher-risk buildings.

1606 The amendments to this paragraph enable a Special Measures Manager to make an application to the First-tier Tribunal for the appointment (or replacement) of a manager of the building (whether that is replacing a landlord, managing agent or a court appointed manager). The effectiveness of the special measures order, and the work a Special Measures Manager can do, may be compromised in a building where there is an incompetent manager or manager who is obstructive/fails to cooperate with the Special Measures Manager.

1607 The Special Measures Manager must serve a notice prior to making an application for a s.24ZA order. That notice must be served on the landlord, on any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to tenants of flats contained in those premises under a tenancy and on each Accountable Person for the higher-risk building. The notice must specify the Special

Measures Manager's name and an address in England and Wales at which any person, on whom the notice is served, may serve notices, including notices in proceedings, on the Special Measures Manager in connection with this Part.

1608 The tribunal may make a s.24ZA order, upon application by a Special Measures Manager, in only two circumstances. Firstly, when the current landlord or manager is breaching an obligation owed to the special measure manager as set out in the special measures order and that it is just and convenient to make the order in all the circumstances of the case; or secondly, where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

Background

1609 This paragraph amends section 24 of the Landlord and Tenant Act 1987.

1610 It aligns the Landlord and Tenant Act 1987 with the Building Safety Act to replace a manager in situations where they fail to meet their obligations in the order to work constructively with the Special Measures Manager in ensuring building safety risks are adequately mitigated.

> ### Example
> An existing managing agent is failing to meet its obligations to the Special Measures Manager, as set out in the special measures order. The Special Measures Manager wants to ensure that all parties with which it is working mitigate building safety risks as required by the Building Safety Act, so it makes an application to the First-tier Tribunal to replace the existing managing agent. The Tribunal makes a finding that the existing managing agent has failed to meet the requisite obligation and considers that for the protection of residents and to enable the Special Measures Manager to adequately discharge its building safety functions it will grant an order under s.24ZA of the Landlord and Tenant Act 1987.

Paragraph 10: Provision of financial assistance by regulator

Effect

1611 Paragraph 10 gives a discretionary power to the Building Safety Regulator to provide financial assistance to a Special Measures Manager and sets out regulation making power enabling the Secretary of State to make provision for the circumstances in which either a loan or grant maybe provided, what conditions will be attached to the assistance and the kind of assistance that should be provided.

1612 Paragraph 10(3) clarifies that the meaning of special measures manager for the purposes of this paragraph is wider than for the schedule as it also includes a manager who was appointed immediately prior to the discharge of an order.

Proposed use of power

1613 Paragraph 10(2) provides the Secretary of State with regulation making powers to create provisions regarding any financial assistance to the Special Measures Manager that may be provided by the regulator.

1614 This will detail the framework for how or when financial assistance may be given, the type of financial assistance that maybe given and conditions that maybe attached to financial assistance including repayment by the Special Measures Manager.

Background

1615 This paragraph ensures that the Special Measures Manager may be enabled to continue its functions where the Accountable Person defaults on payments directed under the special measures order. The manager should enforce payment through the Tribunal if the Accountable Person defaults on payment. In the meantime, the Building Safety Regulator may step in to provide financial assistance to ensure that the terms of the order can be met. This will help to ensure that residents are kept safe in a building while it is in the special measures regime.

Paragraph 11: Special measures order: further directions

Effect

1616 Paragraph 11 sets out that whilst a special measures order in relation to an higher-risk building is in force, the Building Safety Regulator, Accountable Person or Special Measures Manager can apply to the First-tier Tribunal (who may give directions) to the Special Measures Manager or any other person. These directions must be in respect to any matter relating to the exercise of the manager's functions, and any incidental or ancillary matter.

Background

1617 This paragraph supplements paragraph 4 by allowing, on application, the Tribunal to give directions in relation to special measures.

Example

If the Building Safety Regulator would like the Special Measures Manager to be directed to take out professional indemnity insurance or building insurance for example, but it had been omitted from the original order, they would apply to the Tribunal to make a direction to compel the Special Measures Manager to obtain insurance. In this case that direction would be made as an incidental or ancillary matter or a matter relating to the exercise of the manager's functions.

Paragraph 12: Regulator to keep certain matters under review

Effect

1618 Paragraph 12 ensures that the Building Safety Regulator is proactive in keeping certain matters within a special measures order under review. This is required to be undertaken at least every 12 months - but can be undertaken more often if the Building Safety Regulator deems necessary. The review is to include the regulator reviewing the measures taken by the Special Measures Manager in exercising its functions.

1619 The Building Safety Regulator is also required to review the expenses incurred by the manager in relation to the measures taken, any payments made by Accountable Persons for the building and any amount received through commonhold building safety assessments.

1620 If during the review the Building Safety Regulator finds that the terms of the order need to be varied, the regulator must make an application to vary the order in accordance with paragraph 14, as it considers appropriate.

Background

1621 Provisions about reviewing certain matters ensures that the Building Safety Regulator is proactive in undertaking a review of key matters with regard to a building in special measures. It provides some oversight of the progress that the Special Measures Manager is making with their obligations and oversight of financial matters related to that. It places a duty on the regulator to make an application to vary the special measures order following its review, where the regulator deems it appropriate.

Example

A special measures order is in place for a building and the Building Safety Regulator decides they want to review the order twice per year to assess the measures that the Special Measures Manager's has taken and expenses and payment received. The Regulator also wants to ensure that the recalcitrant Accountable Person is cooperating and making payments as set out under the terms of the order. During their review they ask the Special Measures Manager to provide account reconciliations and evidence to support their relevant expenditure. They also ask the Accountable Person to provide bank statements to show payments made to the Special Measures Manager.

During the review it transpires, through the examination of the documentation provided that the expenses incurred by the Special Measures Manager are lower than those allowed for in the financial management proposal. Following discussions between the Building Safety Regulator and the Special Measures Manager, they agree that the original estimated expenditure exceeds the amount which is now required. Following this, the Accountable Person agrees with a variation to the terms of the order in respect of payments to be made in furtherance of the financial management proposal. The Regulator therefore applies to the First-tier Tribunal to vary the order to reduce the Accountable Person's payments to the Special Measures Manager, reflecting the new lower expenditure for the measures required under the order

Paragraph 13: Notification by regulator before applying to vary special measures order

Effect

1622 Paragraph 13 sets out the notification process that the Building Safety Regulator must follow where it proposes to make an application to vary a special measures order that is in force. It sets out that the Building Safety Regulator must give an initial notice of the proposal to those persons mentioned in paragraph 13(2) which include the Accountable Person for the building, the Special Measures Manager and such other persons as listed in the sub-paragraph.

1623 Paragraph 13(3) prescribes the content of what must be included in the initial notice, including the way in which the notified persons can submit comments and observations, to the Building Safety Regulator about the proposed variation of the order. At the end of a specified period (set out in the initial notice), the Building Safety Regulator must decide whether to make the application and give a final notice of its decision to the persons mentioned above.

1624 The Building Safety Regulator must, before making an application to the First-tier Tribunal, set out the reasons for and its decision within a final notice and if necessary, also set out the finalised details of the proposed changes to the special management order about which it will make an application to the Tribunal.

1625 Paragraph 13(7) provides that in notifying the requisite persons the Building Safety Regulator must notify those it has knowledge of and has taken reasonable steps to make itself aware of.

1626 The Secretary of State has the power to make regulations amending the persons that need to be notified and setting out the requisite form and manner of notices issued by the Building Safety Regulator under this paragraph, as per sub-paragraphs (9) and (10).

Background

1627 Where the Building Safety Regulator proposes to apply to the First-tier Tribunal to vary a special measures order in relation to an higher-risk building, this paragraph ensures procedural fairness, including giving affected parties the opportunity to provide representations. The paragraph ensures that the Building Safety Regulator discharges its power to vary a special measures order in a fair way.

> ### Example
> The Building Safety Regulator is working with the Special Measures Manager and they both identify that a further specific function relating to part 4 of the Act needs to be included in the order. The Building Safety Regulator notifies the Accountable Persons, the Special Measures Manager and persons specified in this paragraph, of its intention to apply to the First-tier Tribunal to vary the order and provides details on how and by when, representations can be made. The managing agent also feels that the specific function should be included in the order and provides comments on the proposal to Building Safety Regulator. The Building Safety Regulator considers these, decides to continue to apply for the variation of the special measures order at the First-tier Tribunal and issues a final notice to that effect, including its reasons and terms of variation.

Paragraph 14: Variation or discharge of special measures order

Effect

1628 Paragraph 14 gives power to a First-tier Tribunal to vary or discharge a special measures order made under paragraph 4 following an application by the Building Safety Regulator, an Accountable Person for the building or Special Measures Manager for the building.

1629 Paragraph 14(2) specifies that the Tribunal may vary an order to change the identity of the Special Measures Manager only on application from the Building Safety Regulator. This does not apply where the Building Safety Regulator, an Accountable Person for the building or Special Measures Manager for the building all agree to the proposed change of Special Measures Manager.

1630 Paragraph 14(3) sets out factors that the Tribunal must consider before deciding whether to vary or discharge the order. Namely, whether in doing so there is a likelihood of re-occurrence of the circumstances which led to the special measures order in the first place; and whether it is just and convenient in all the circumstance to vary or discharge the order. The Tribunal does not have to consider the matters in Paragraph 14 (3) where the Building Safety Regulator, an Accountable Person for the building or Special Measures Manager for the building all agree to the proposed change.

1631 Paragraph 14(5) provides that where a Special Measures Manager lacks the capacity to agree to any application under this paragraph, that manager's agreement is not necessary in order to rely on the provisions in paragraph 14(4).

1632 Paragraph 14(6) provides that where a special measures order is varied or discharged, the Tribunal may give directions to any person with respect any matter relating to the variation or discharge, and any incidental or ancillary matter.

1633 Paragraph 14(7) outlines that when a special measures order comes to an end the tribunal must direct a Special Measures Manager to prepare a reconciliation account and give a copy of the reconciliation account to the regulator and to each Accountable Person for the building.

1634 Paragraph 14(8) specifies that a tribunal is able to direct a final payment by the Accountable Person or the Special Measures Manger at the time the order is discharged or at any point after that. This is to ensure that any monies owing to either part is paid across to the other. And if this payment is not made, either party has the ability to purse for payment through the Tribunal, pursuant to that order.

1635 Paragraph 14(9) sets out the definition of "reconciliation account". Sub-paragraph (9)(a) defines it as being a document which details all receipts and expenses in connection to with the Special Measures Managers exercise of functions and details all credits and debits in respect of a "relevant account". The document should also include a statement which provides explanations for any differences.

1636 Sub-paragraph (9)(b) provides a definition of a "relevant account" as an account used by the Special Measures Manager to receive payments from the Accountable Persons and to hold amounts received from the commonhold building safety assessments.

1637 Sub-paragraph (10) clarifies that the meaning of "Special Measures Manager" for the purposes of this paragraph is wider than for the schedule, as it also includes a manager who was appointed immediately prior to the discharge of a special measures order.

Background

1638 In widening the powers of the First-tier Tribunal to make a special measures order and appoint a Special Measures Manager, there must also be complementary powers which enables the First-tier Tribunal to vary and discharge the special measures order made under paragraph 4.

Example

An Accountable Person applies to the First-tier Tribunal to discharge the special measures order placed upon its building because it feels that the fire and structural risks are now managed adequately, and the residents would no longer be at risk. An assessment from the Building Safety Regulator is submitted which shows improvements and that the Regulator is of the opinion that the contraventions will not reoccur, and the Accountable Person cooperated in the operation of the special measures order. The First-tier Tribunal discharges the order because the application for discharge is one that is made with consent of the Building Safety Regulator, the Accountable Persons for the building and the Special Measures Manager for the building. In discharging the order, the First-tier Tribunal directs the Special Measures Manager to prepare a reconciliation account and makes a direction for payments to settle accounts between the Accountable Person and Special Measures Manager.

Paragraph 15: Notifications about special measures order

Effect

1639 When an order under paragraph 4 is made by the First-tier Tribunal to appoint a Special Measures Manager, the Building Safety Regulator must take all reasonable steps to notify each Accountable Person for the building and other persons required by paragraph 15(2).

1640 When the Tribunal varies or discharges a special measures order, the regulator must take all reasonable steps to notify each Accountable Person for the building and such other persons detailed in paragraph 15(2).

1641 Paragraph 15(3) clarifies the meaning of "relevant part" by reference to the definition at paragraph 2(10).

1642 Paragraph 15(4) gives a power to the Secretary of State to amend the list of persons to be notified at paragraph 15(2), by way of regulations.

Background

1643 Notification about the making, varying or discharging of special measures orders ensure that the relevant persons set out in paragraph 15(2) are aware of action taken by the Building Safety Regulator and the First-tier Tribunal's consequent decision.

Example

The Building Safety Regulator deems that a building should be placed in special measures and successfully applies to the First-tier Tribunal for a special measures order appointing a Special Measures Manager. The Building Safety Regulator must then notify Accountable Persons, and those other persons as set out in paragraph 15(2). Such notification is likely to be notifying that the court made the order and forwarding a copy of the order to those persons.

Paragraph 16: Special measures order: change in accountable person etc

Effect

1644 Paragraph 16 makes provision for the continued operation of a special measures order when the Accountable Persons for a building change during the life of the order. This could be due to an Accountable Person disposing of its interest or part of its interest in the building or transferring its interest to another Accountable Person.

1645 Paragraph 16(2) provides that the special measures order ceases to apply to the outgoing Accountable Person for a relevant part of the building at the time that and in so far as the Accountable Person stops being responsible for all or any part of the relevant part of the building.

1646 Following the departure of the outgoing Accountable Person, paragraph 16(3) sets out that the order is applicable to the new, incoming Accountable Person responsible for all or any part of the relevant part of the building.

1647 Paragraph 16(4) sets out that even though the outgoing Accountable Person ceases to be responsible under the special measures order going forward, they are still liable for any contraventions they may have committed whilst they were subject to the order. For example, they will still be subject to any debts outstanding prior to the incoming Accountable Person becoming responsible.

1648 Paragraph 16(5) ensures that the order remains binding on subsequent Accountable Persons regardless of existing statutory priorities of interests and registry requirements.

1649 Paragraph 16(6) makes it clear that the powers of the Tribunal to vary a special measures orders in accordance with paragraph 14 are not affected by this paragraph.

Background

1650 This paragraph makes provision for new incoming Accountable Persons to become subject to the terms of a special measures order that is in force on their appointment, automatically, when the order has been made before they were an Accountable Person for that building. It also clarifies liability for the outgoing Accountable Person of any relevant part of a building. This is to ensure that a building in special measures cannot be transferred to a third party to subvert the requirements of the special measures order.

Example

Over the course of a special measures order the Accountable Person decides they want to sell their interest in the building and finds a purchaser for the building. The incoming Accountable Person becomes subject to the special measures order due to the statutory provisions and has to work with the Special Measures Manager to bring the building up to standard. Upon the transfer of interest, it transpires that the outgoing Accountable Person owes monies to the Special Measures Manager. The Special Measures Manager can seek to recover the monies owed from the outgoing Accountable Person.

Paragraph 17: Interpretation

1651 This Paragraph explains the meaning of key terms referred to in this schedule.

Schedule 8: Remediation costs under qualifying leases

Paragraph 1: Interpretation

Effect

1652 Paragraph 1(1) sets out key definitions that are relevant to Schedule 8.

1653 "Associated", "building safety risk", "joint venture", "qualifying lease", "the qualifying time", "relevant building", and "relevant defect" are defined in sections 117 to 121.

1654 There are a number of regulation-making powers in the Schedule; accordingly, "prescribed" means prescribed in regulations which the Secretary of State has the power to make.

1655 For the purposes of the Schedule, a "relevant measure" is defined, in relation to a relevant defect (to which see section 120). A "relevant measure" is one that is taken to remedy a defect, to prevent a risk from materialising, or to reduce the severity of an incident arising from the risk materialising.

1656 Sub-paragraph (1)(a) sets out that a relevant measure can be a measure that is taken to remedy, or fix, a relevant defect. This would include, for example, work to remove unsafe cladding from a building, to put right internal compartmentation issues, or to underpin defective foundations (provided those defects are relevant defects, meaning that the defects must give rise to a building safety risk, as defined in section 120). Services procured in connection with remedying a relevant defect, such as undertaking an external wall survey, or consultancy and project management fees, will also be relevant measures, as those measures are a necessary part of the work needed to remedy the relevant defect.

1657 Sub-paragraph (1)(b)(i) sets out that a relevant measure can alternatively be a measure that is taken to prevent a "relevant risk" from materialising, where a "relevant risk" is defined as a building safety risk that arises as a result of the relevant defect. For example, if the presence of unsafe cladding on a building gives rise to a fire safety risk, that fire safety risk would be defined as a "relevant risk". Any measure which is taken to prevent that fire safety risk from materialising would be a relevant measure. For example, if a "waking watch" fire warden patrol is put in place in the building to mitigate against the fire safety risk until such a time as the cladding can be removed, the waking watch would be classed as a relevant measure, because it has been put in place to mitigate against the fire safety risk caused by the unsafe cladding.

1658 Sub-paragraph (1)(b)(ii) sets out that a relevant measure can also be one that reduces the severity of an incident resulting from the relevant risk materialising. For example, in some circumstances full remediation of a building may not be necessary, and a less costly and more proportionate measure may be appropriate. In some circumstances, it may be possible to mitigate against the risk created by the presence of fire safety defects through the installation of, for example, a fire alarm or a sprinkler system (although this will depend on the facts as they pertain to the building in question; while mitigation will be appropriate in some circumstances, in others full remediation will be needed to secure the safety of the building). Although the fire alarm will not prevent the risk from materialising altogether (i.e., it will not stop a fire from spreading), it will reduce the severity of a fire as the fire alarm would aid successful evacuation of the building.

1659 "Service charge" has the same meaning as in section 18 of the Landlord and Tenant Act 1985. That definition applies in relation to residential leases only.

1660 Some parts of the Schedule also apply to service charges under leases of non-residential premises. As the definition of "service charge" under the Landlord and Tenant Act 1985 only relates to residential premises, paragraph 1(2) sets out that, for the purposes of Schedule 8, "service charge" in relation to non-residential premises has the same meaning as in relation to a residential premises. This means that, for the purposes of this Schedule, a service charge in relation to a non-residential lease is defined in the same way as under section 18 of the Landlord and Tenant Act.

Background

1661 This is a new provision.

1662 The explanatory note to section 122 gives a general overview of the provisions in Schedule 8. This paragraph sets out definitions that are relevant to the subsequent paragraphs, many of which have been provided in sections 117 to 121.

1663 A number of multi-occupied residential buildings in England have been found to have historical building safety defects which can be costly to put right. The pre-existing legal position in most cases is that leaseholders are liable in full for these costs. The leaseholder protections change the law to protect leaseholders from some or all these costs.

1664 Section 120 defines a "relevant defect" for the purposes of the leaseholder protections as defects which have been created in the past 30 years, which give rise to a building safety risk, and which have arisen due to the way the work was done (including in relation to the provision of professional services) and the use of defective or inappropriate products in construction.

1665 Paragraph 1 defines the types of work (defined as a "relevant measure") in relation to relevant defects to which the leaseholder protections apply. As well directly remediating defects (such as removing unsafe cladding), the protections also apply to interim measures like waking watches and other measures which mitigate against risks such as the installation of fire alarms. Fees incurred in connection with remedying relevant defects, for example project planning fees and costs of external wall fire risk assessment will also be caught by the definition of a relevant measure. This ensures that the leaseholder protections apply to all types of costs which could be incurred in connection with making buildings safe due to historical building safety risks.

Paragraph 2: No service charge payable for defect for which landlord or associate responsible

Effect

1666 Paragraph 2 sets out that service charges are not payable under a lease in respect of a relevant defect where the landlord, or an associate of the landlord, was responsible for that defect.

1667 Sub-paragraph (1) sets out that paragraph 2 applies in relation to any lease of a premises in a relevant building. The effect of this is that paragraph 2 applies to all leases, irrespective of whether the lease is a qualifying lease under section 119. This means that paragraph 2 applies to all residential leases in a relevant building (irrespective of how many additional properties are owned), and to commercial leases.

1668 Sub-paragraph (2) sets out the circumstances in which no service charge is payable under a lease in respect of a relevant measure for the purposes of this paragraph. No service charge is payable in respect of a relevant measure if the landlord is either responsible for the defect, or if they are associated with the person responsible for the defect, where "associated" has the meaning given in section 121. Sub-paragraphs (3) and (4) set out what is meant by "responsible for" a defect.

1669 Sub-paragraph (3)(a) sets out how paragraph 2 applies in relation to an "initial defect". An "initial defect" is defined in sub-paragraph (4) as being a defect which has arisen from works relating to the initial construction or conversion of the building, as defined in section 120(3)(a). A person is "responsible for" the defect in this case if they were the developer (which is defined in subsection (4)), or were in a joint venture with the developer, or if they undertook or commissioned the work themselves. This means that, in relation to a defect which was created during construction, no service charge is payable by any leaseholder in respect of the defect if any landlord for the building was also the developer. As set out in subparagraph (2)(a), this includes any person associated with the person responsible. This means that a landlord who is a subsidiary of the developer would also be caught for the purposes of this paragraph and would not be able to pass on any costs to leaseholders.

1670 Sub-paragraph (3)(b) sets out how paragraph 2 applies in relation to defects that are not initial defects; in other words, defects which have been created after the building's initial construction or conversion. In this case, a person is "responsible for" the defect if they undertook or commissioned the works which have caused the creation of the defects. For example, if a landlord has commissioned a major refurbishment of a building that has later been found to be defective, for the purposes of this paragraph the landlord would be deemed to be responsible for the defects arising due to the refurbishment. Sub-paragraph (3)(b) applies equally where the landlord commissioned the works through its managing agent.

1671 Sub-paragraph (4) provides a definition of "relevant landlord". A "relevant landlord" is any landlord under the lease at the beginning of 14 February 2022 (the qualifying time) or any superior landlord at that time. This means that the test as to whether a landlord is responsible for the defect applies at the qualifying time, and the status of the building under paragraph 2 applied and became fixed at that time. For example, if on 14 February the freeholder of the building was also the developer, then no service charge would be payable by leaseholders. Even if the freeholder subsequently sold off the building to another company who is not linked to the developer, leaseholders would still be protected from all costs, as on 14 February, the freeholder was linked to the developer. The new freeholder would take on all the liabilities of the previous freeholder, irrespective of whether the new freeholder has links to the developer.

Background

1672 This is a new provision.

1673 Most of the leaseholder protections provisions apply only to qualifying leases, as defined in section 119. This is because the protections have been designed to apply leaseholders living in their own homes, or who have moved out of their home and are subletting. In addition, a lease will be qualifying if its owner owns no more than three properties in the United Kingdom in total, in recognition of the circumstances surrounding people who own a small number of additional properties. Where a lease is non-qualifying, in most circumstances, the owner of that lease will be expected to contribute to the costs of remediation as per the terms of the lease (but paragraph 11 of Schedule 8 provides that no leaseholder can be required to pay more than they would have done in the absence of the protections; taken together with paragraph 12, this means that any costs not recoverable from a leaseholder must be borne by the landlords for the building and cannot be reallocated to other leaseholders). This is because the leaseholder protections have been designed to take a proportionate approach to the allocation of costs; this means focusing protections on those leaseholders who are most likely to need them, and that parties are expected to make a greater contribution to remediation if they are more likely to have the means to do so.

1674 There is an exception under this paragraph to the general position that the protections only apply in respect of qualifying leases. Where the landlord is responsible for the defects, then no service charge is payable by any leaseholder in respect of that defect. This aligns with the Government's position that those directly responsible for creating historical building safety defects need to pay to put them right.

1675 As discussed in the explanatory note to section 122, where service charges are not payable according to paragraph 2, the provisions apply irrespective of when any service charge demands were issued to leaseholders.

1676 This paragraph sets out a definition of "responsible for" a relevant defect. This definition includes those who directly undertook defective work themselves, as well as those who commissioned the work and landlords that were in joint ventures with developers. Nothing in paragraph 2 (or anywhere else in Schedule 8) limits or otherwise interferes with the ability of any party to use legal remedies available to them to pursue other parties and hold them to account. For example, if a housing association that owns a block was in a joint venture with the developer of that block, then no service charge would be payable in respect of initial defects by the building's leaseholders, and the housing association would instead be allocated liability for those costs according to the Schedule. However, the paragraph does not limit the ability of the housing association to hold to account through the courts, or via any other legal means, the developer, contractors, or other professionals who may be directly responsible for carrying out the defective work.

1677 It will not necessarily always be the case that the landlord that is responsible for the defects is also under the obligation to fix them. This paragraph provides that no service charge is payable where a relevant landlord was responsible for the defects. Paragraph 12 of this Schedule creates powers which allow regulations to be made setting out how costs are to be recovered, including where a landlord with a repairing obligation needs to recover costs

from a different landlord who was responsible for the defects. For example, it might be that a building's head lessee bears responsibility for maintaining the structure of the building, but the building's freeholder was the developer. In this situation, the head lessee would need to undertake remediation, but would be entitled to recover remediation costs from the freeholder.

1678 As discussed in the explanatory note to section 121 it is common practice for owners of freehold and superior lease interests in multi-occupied residential buildings to use thinly capitalised subsidiary companies, often termed special purpose vehicles, to hold these interests. While developers will often sell on buildings after construction is completed, some developers and their subsidiaries will retain ownership of their buildings. Where developers have retained interests in buildings that they have had a role in developing, they will need to bear the costs associated with remediation in full.

Example 1

A building constructed by a developer in 2005 has been found to have fire safety defects which need remediation. On 14 February 2022 the building's freehold was owned by a subsidiary of the developer. For the purposes of paragraph 2, as the freeholder is linked to the developer, the freeholder is classed as "responsible for" the fire safety defects associated with the building's initial construction. All leaseholders in the building are fully protected from the costs associated with remediating those defects. The freeholder sells the building on, but as the status as regards liability become fixed on 14 February 2022, then there is no change to liability if the building is subsequently sold. Because the freeholder on 14 February was a subsidiary of the developer, and the liability status became fixed at that point, then the leaseholders in that building remain protected in full, and the next owner of the building would bear the same liability as the previous freeholder if the remediation had not been completed.

Example 2

The refurbishment of a block of flats was commissioned by the freeholder in 2008. The refurbishment introduced fire safety defects into the building that now need to be remediated. Because the freeholder commissioned the works, the freeholder is responsible for the defects for the purposes of this paragraph, and costs cannot be passed on to leaseholders in respect of those defects. The freeholder who commissioned the work wishes to pursue the lead contractor for the refurbishment, who was responsible for defective work which led to the fire safety defects. The freeholder shows to the court that the contractor's defective work led to the defects being created and is able to claim damages from them

Paragraph 3: No service charge payable if landlord meets contribution condition

Effect

1679 Paragraph 3 sets out that a service charge is not payable under a qualifying lease if the relevant landlord meets the contribution condition.

1680 Sub-paragraph (1) sets out that no service charge is payable under a qualifying lease (to which see section 119) in respect of a relevant measure (to which see paragraph 1) if the person that was the landlord under the lease on 14 February 2022 ("the relevant landlord") met the contribution condition. "The relevant landlord" is defined as the landlord under the lease at the qualifying time.

1681 Sub-paragraph (2) sets out the contribution condition. The contribution condition is that the landlord group's net worth at the qualifying time was at least N × £2,000,000.

1682 Sub-paragraph (4)(a) defines "the landlord group". The landlord group is the relevant landlord and any person associated with it, where "associated" has the meaning given in section 121.

1683 N is defined at sub-paragraph (2) as the total number of relevant buildings held by the landlord and its group. A "relevant building" is defined in section 117 as a multi-occupied residential building which is at least 11 metres tall or has at least five storeys. Sub-paragraph (3) sets out that a relevant building counts as being part of the landlord's group if a member of the landlord's group was, on 14 February 2022, a landlord for that building. This means that to calculate N, the landlord group would first be defined by identifying all companies which are associated with the landlord. N would be the total number of relevant buildings owned by all companies within the landlord group.

1684 Sub-paragraph (4)(b) allows the Secretary of State to make regulations setting out how the net worth of the landlord group is to be determined.

1685 Sub-paragraph (5) creates a power for the Secretary of State to amend, by regulations, the amount specified at sub-paragraph (2). This means that regulations made by the Secretary of State can change the reference to £2,000,000 to another amount.

1686 Sub-paragraph (6) sets out that the contribution condition does not apply in certain circumstances, determined by the identity of the relevant landlord at the qualifying time. The contribution condition does not apply if, at the qualifying time, the relevant landlord under the lease was either a social housing provider, a local authority, or a prescribed person. In this sub-paragraph, prescribed means set out in regulations made by the Secretary of State.

Background

1687 This is a new provision.

1688 Building owners are responsible for the safety of their own buildings, and the leaseholder protections set out in law that building owners of medium- and high-rise buildings are responsible for some, or all the costs associated with remediating historical building safety defects. The Government's approach to the remediation of historical building safety defects

in medium- and high-rise buildings is that in the first instance, those responsible for the defects must pay to remedy them. This principle is set out for the leaseholder protections provisions in paragraph 2, as that paragraph provides that no service charge is payable under a lease if the relevant landlord is responsible for the defect.

1689 The Government has also set out its position that, where a building owner or landlord can afford to meet the costs of remediating their own building in full, then they need to do so ahead of leaseholders. Where the condition at paragraph 2 is not met as no landlord for the building was responsible for the defects, paragraph 3 sets out that landlords who can afford to meet the costs that would otherwise be attributable to qualifying leaseholders must do so.

1690 The "contribution condition" is defined in this paragraph as the landlord group's net worth being at least N × £2,000,000, or in other words, at least £2,000,000 per relevant building owned by the landlord group. The contribution condition is a metric which measures the ability of the landlord group to meet the costs of remediation in full. If the landlord group has a net worth of more than £2,000,000 per relevant building it owns, it will need to meet the remediation costs that would otherwise have been attributable to the qualifying leaseholders. If the net worth per relevant building is less than £2,000,000, then it will not need to meet the costs in full, as some costs will be recoverable from qualifying leaseholders, up to the permitted maximum (to which see paragraph 6), and from any other relevant landlords with an interest in the building (see the explanatory note to paragraph 12 for more detail).

1691 While the condition at paragraph 2 applies to all leases in the building, the condition at paragraph 3 only applies to qualifying leases. This means that, if the contribution condition is met by the relevant landlord, no service charge is payable only under qualifying leases. Non-qualifying leases are unaffected by paragraph 3 and can be expected to contribute towards the costs of remediation as per the terms of their lease agreement.

1692 As discussed in the explanatory note to section 122, where service charges are not payable according to paragraph 3, the provisions apply irrespective of when any service charge demands were issued to leaseholders.

1693 While paragraph 2 applies to any landlord under the lease at the qualifying time, paragraph 3 only applies in respect of the landlord under the qualifying lease. For the purposes of paragraph 3, for the condition to be met, the landlord who meets the contribution condition must be the landlord over the qualifying lease specifically. For example, if a landlord with a lease over only the top five floors of the building meets the contribution condition, then the limit on service charge amounts under this paragraph only applies to qualifying leases on the top five floors.

1694 The contribution condition applies to "the landlord group" which is defined as the relevant landlord and any person associated with it, where "associated" has the meaning given in section 121. It is common practice for institutional investors in freehold interests to hold those interests as part of fragmented corporate structures, so that any given company might itself only own a few freeholds, but the wider group of which it is part will own many more. As discussed in the explanatory note to section 121, the individual freehold-owning entities will often be thinly capitalised with limited assets, but the wider group structure will be

well-capitalised and more likely to be able to meet the costs of remediation in full. The contribution condition of having a net worth of at least £2,000,000 per relevant building has therefore been defined as applying to the whole group structure, rather than to each individual freehold-owning entity.

Proposed use of power

1695 The contribution condition is based on the "net worth" of the landlord group. In broad terms, the net worth is a measure of the total assets of the group minus its liabilities. The power at sub-paragraph (4)(b) will be used to make regulations setting out how the net worth of the landlord group is to be calculated.

1696 The contribution condition is that the landlord group's net worth at the qualifying time was at least £2,000,000 per relevant building. The power at sub-paragraph (5) allows the Secretary of State to change, by regulations, the reference to £2,000,000 to another amount. This power will be used if it becomes apparent that another value for the contribution condition would be more appropriate than £2,000,000.

1697 Sub-paragraph (6) lists the types of relevant landlord to which the contribution condition does not apply. The power at sub-paragraph (6)(c) allows further categories of persons to whom the contribution condition does not apply. This power will be used to prescribe further categories of persons to be excluded from paragraph 3 where it would not be appropriate for the contribution condition to be applied to that class of persons, or where "net worth" is not a relevant concept to that class of persons.

Example 1

A ten-storey building constructed by a developer in 2010 has been found to have non-cladding fire safety defects which need remediation. The landlord under the lease is the freeholder. The freeholder does not have links to the developer. The freeholder's group comprises the freeholder and its parent company. The freeholder owns four additional buildings above 11 metres in height, and so owns five relevant buildings in total. The total net worth of the freeholder and its parent company is £12,000,000. This gives a total of £2,400,000 per relevant building, which is higher than the contribution condition of £2,000,000 per relevant building. The freeholder of the building therefore cannot pass any remediation costs onto qualifying leaseholders.

Example 2

An eight-storey building constructed by a developer in 2008 has been found to have non-cladding fire safety defects which need remediation. The landlord under the lease is the freeholder. The freeholder does not have links to the developer. The freeholder is not part of a wider group structure, and it owns one other relevant building. The total net worth of the freeholder is £1,000,000, giving a net worth per relevant building of £500,000. This is less than the contribution condition of £2,000,000 per relevant building. This means that the freeholder does not pass the contribution condition and, subject to the other provisions in the Schedule, may recover some costs from qualifying leaseholders. The freeholder will still have to meet any costs which are not recoverable under qualifying leases.

Example 3

A ten-storey building with non-cladding fire safety defects has two landlords for different parts of the building: one for the top five floors and one for the lower five floors. The landlord for the upper five floors meets the contribution condition; this means that qualifying leaseholders on the top five floors cannot be charged for non-cladding defects. The landlord for the lower five floors does not meet the contribution condition; this means that, subject to the other provisions in the Schedule the landlord is entitled to recover some costs from qualifying leaseholders.

Paragraph 4: No service charge payable where lease below a certain value

Effect

1698 Paragraph 4 provides that no service charge is payable under a qualifying lease where the value of the lease is below a certain amount.

1699 Sub-paragraph (1) sets out that this paragraph applies in respect of a qualifying lease (to which see section 119) in respect of a relevant measure (to which see paragraph 1) relating to a relevant defect (to which see section 120).

1700 Sub-paragraph (1) sets out that no service charge is payable under a qualifying lease if, at the qualifying time, the value of the lease was less than £325,000 if the premises is in Greater London, or £175,000 if the premises was anywhere else in England. Greater London means the 32 London Boroughs, the City of London, and the Temples (Inner and Middle Temple – which are treated separately as local authorities for most legal purposes), as set out in the London Government Act 1963.

1701 Sub-paragraph (1) sets out that the value of the qualifying lease is taken at the qualifying time. Sub-paragraph (2) sets out how the value of the qualifying lease at the qualifying time is to be determined and provides that it should be determined in accordance with paragraph 6 of Schedule 8, and the regulations made under it. Paragraph 6(7) sets out how the value of the qualifying lease is to be determined; for further information, see the explanatory note to paragraph 6.

Background

1702 This is a new provision.

1703 Paragraph 8 of Schedule 8 sets out that qualifying leaseholders cannot be charged for costs relating to cladding remediation. Paragraphs 5 to 7 of Schedule 8 set limits on service charge amounts that can be passed to leaseholders in respect of relevant measures relating to relevant defects that are not related to cladding – this includes costs associated with non-cladding defects and interim measures like waking watches. In respect of most leases, the maximum amount that can be ("the permitted maximum") charged for non-cladding defects is £10,000, or £15,000 for leases in Greater London (see the explanatory note to paragraph 6 for further detail).

1704 Paragraph 4 provides that where the value of the lease is less than a certain amount, no service charge is payable in respect of a relevant measure relating to any relevant defect; this includes cladding and non-cladding costs, and interim measures. This value is set at £175,000, or £325,000 for properties in Greater London.

1705 The Government has made clear that it is it taking a proportionate approach to the allocation of remediation costs. Where no landlord with an interest in the building was responsible for the defect, and the landlord under the lease does not meet the contribution condition, this approach involves capped contributions from leaseholders in certain circumstances. To increase affordability of these contributions, paragraph 7 provides for the contributions to be spread over ten years.

1706 The intention of the provision in this paragraph is to ensure that those leaseholders who are least likely to be able to afford to make a capped contribution are protected from all costs. This is achieved by providing that leaseholders living in low-value properties cannot be charged for any non-cladding (or cladding) costs.

1707 The lease value is calculated according to the method set out in paragraph 6. Paragraph 6 sets out that lease values are calculated by "uprating" the price at which the property was last sold on the open market. "Uprating" means multiplying the most recent sale price by a fixed multiplying factor, which will be set out in regulations. For further detail, see the explanatory note to paragraph 6.

1708 As discussed in the explanatory note to section 122, where service charges are not payable according to paragraph 4, the provisions apply irrespective of when any service charge demands were issued to leaseholders.

> ### Example 1
> A flat in Birmingham was last sold in 2012. The uprated value of the property is £170,000. The leaseholder of the flat cannot be charged anything by their landlord for costs related to historical cladding or non-cladding defects.
>
> ### Example 2
> A flat in London was last sold in 2016 and its uprated value is £300,000. The leaseholder of the flat cannot be charged anything by their landlord for costs related to historical cladding or non-cladding defects.

Paragraph 5: Limit on service charge in other cases

Effect

1709 Paragraph 5 makes provision for limits on service charges under qualifying leases.

1710 Sub-paragraph (1) sets out that a service charge in respect of a relevant measure (to which see paragraph 1) relating to a relevant defect (to which see section 120) cannot exceed the permitted maximum, meaning that landlords cannot charge leaseholders more than that amount. Sub-paragraph (4) provides that "the permitted maximum" is defined in paragraph 6.

1711 Sub-paragraphs (1)(a) and (1)(b) define the service charges that are to be counted towards the permitted maximum for the purposes of the Schedule. If the landlord is seeking to levy a new service charge, the amount of that service charge, plus the total amount of "relevant service charge" which have been levied before the new service charge, cannot exceed the permitted maximum.

1712 Sub-paragraph (2) defines "relevant service charge". Any service charge which falls due after commencement (which is two months after Royal Assent of this Act, or 28 June 2022) is to be counted as a relevant service charge; in other words, any service charge levied after commencement in respect of a relevant measure relating to a relevant defect is counted as a relevant service charge.

1713 In addition, any service charge that was levied in the pre-commencement period is also counted as a "relevant service charge". Sub-paragraph (3) defines the "the pre-commencement period".

1714 In most cases, the pre-commencement period will be the period of five years leading up to commencement, which is the period from 28 June 2017 to 28 June 2022. This means that any service charges paid in that period in respect of relevant measures are to be counted towards the permitted maximum. This applies if the person who is the tenant under the lease ("the relevant person") has been the leaseholder since 28 June 2017.

1715 If relevant person did not become the tenant under the lease until after 28 June 2017, then sub-paragraph (3)(a) provides that the pre-commencement period for that person began when they became the tenant under the qualifying lease. This means that any service charges in respect of relevant measures paid since the person became the leaseholder, if that time was after 28 June 2017, are to be counted towards the permitted maximum.

Background

1716 This is a new provision.

1717 The provisions in Schedule 8 protect qualifying leaseholders from costs associated with historical building safety defects by limiting, or preventing altogether, the costs that can be passed to leaseholders through the service charge by landlords. Paragraph 5 makes provision that limits the costs that can be passed to leaseholders through the service charge by providing that service charge amounts in respect of costs associated with historical building safety defects cannot exceed a maximum amount referred to as "the permitted maximum".

1718 The paragraph sets out the service charges that are to be counted towards the permitted maximum amount. As well as future costs relating to historical building safety defects, costs that have already been incurred by the leaseholder in the past five years count towards the capped leaseholder contribution. Since the Grenfell Tower fire in 2017, many leaseholders have been faced with significant costs associated with historical building safety defects, including costs to remediate defects and to cover interim measures like waking watches. This paragraph provides that costs incurred in the five years prior to commencement, so from 28 June 2017, count towards the caps. This means that if leaseholders have already made payments, then going forward they will not have to pay the full capped amount. If a leaseholder has already paid up to the permitted maximum, their landlord will not be able to demand any further payments in respect of relevant measures; this includes costs that have been incurred in relation to cladding and non-cladding defects and interim measures like waking watches. (paragraph 8 provides that qualifying leaseholders cannot be charged for cladding costs going forward, whereas this paragraph provides that any cladding costs already incurred by leaseholders count towards the permitted maximum capped amounts).

1719 This provision in respect of costs already paid out only applies where costs have been incurred by the person who owns the property at commencement. This means that, for properties that have been acquired more recently (within the five years leading up to commencement) any costs incurred by the previous leaseholder or leaseholders are not to be counted towards the permitted maximum. However, if the property is sold after commencement, costs incurred by the previous leaseholder count towards the capped contribution amount.

1720 As discussed in the explanatory note to section 122, where service charges are not payable according to paragraphs 5 to 7, the provisions apply irrespective of when any service charge demands were issued to leaseholders.

These examples refer to the permitted maximum amounts set out in paragraph 6.

Example 1

A qualifying leaseholder of a flat in London acquired their property in 2015 and their capped contribution is £15,000. In the five years between 28 June 2017 and 28 June 2022, they had already paid out £5,000 towards a waking watch on their building. The maximum their landlord can charge them in respect of relevant measures is £10,000.

Example 2

A qualifying leaseholder of a flat in Leeds acquired their property on 1 January 2020. In the period between 1 January 2020 and 28 June 2022 they had incurred £1,000 of costs towards a waking watch. Costs incurred by the owner of the flat before 1 January 2020 do not count towards the capped amount. The maximum that their landlord can charge them going forward in respect of relevant measures is £9,000.

Example 3

The leaseholder of the flat referred to in Example 2 pays a further £2,000 towards remediation costs before selling their flat in 2024. They had already paid £1,000 in the pre-commencement period. The maximum that the new buyer of the flat can be charged by their landlord towards relevant measures is £7,000.

Paragraph 6: the permitted maximum

Effect

1721 Paragraph 6 makes provision about the meaning of "the permitted maximum" in relation to a qualifying lease.

1722 Sub-paragraph (2) sets out that the value of the permitted maximum is £15,000 for properties in Greater London, or £10,000 otherwise, for properties in the rest of England. Greater London means the 32 London Boroughs, the City of London, and the Temples (Inner and Middle Temple – which are treated separately as local authorities for most legal purposes), as set out in the London Government Act 1963. Sub-paragraph (2) is subject to sub-paragraphs (3) to (5).

1723 Sub-paragraphs (3) and (4) provide for a higher permitted maximum for higher-value properties. Where the value of the qualifying lease at the qualifying time (to which see section 119) is between £1,000,000 and £2,000,000, the permitted maximum is £50,000. Where the qualifying lease value is greater than £2,000,000, the permitted maximum is £100,000.

1724 Sub-paragraph (5) provides that where a lease is a shared ownership lease, the permitted maximum is to be calculated in accordance with the tenant's total share of the lease at the qualifying time. This means that paragraph 6 applies according to the share of ownership in the property on 14 February 2022; the position does not change should a shared owner acquire an increased total share of their property after that date. Sub-paragraph (5)(a) sets out that the value of the qualifying lease is to be determined according to the value of a 100% share in the lease. Sub-paragraph (8) sets out the meaning of "shared ownership lease" and "total share".

1725 Sub-paragraphs (6) and (7) make provision for how the value of the qualifying lease at the qualifying time is to be determined. Sub-paragraph (6) sets out that the way in which the value of the qualifying lease is to be determined will be set out in regulations made by the Secretary of State. Sub-paragraph (7) sets out further detail about what the regulations may provide. These sub-paragraphs apply for the purposes of this paragraph and to paragraph 4 (which makes provision for service charges not to be payable if the lease value is below £175,000, or £325,000 for properties in Greater London).

1726 Sub-paragraph (7) sets out how the value of the qualifying lease is to be determined. If the property was last sold on the open market in 2022, the value of the lease is the value at which the property sold on the open market. If the property was last sold on the open market before 2022, then the value of the lease is determined by uprating the most recent sale price of the property in accordance with the regulations. The regulations may also set out how the value of the qualifying lease is to be determined in "prescribed cases", such as where the most recent sale price of the property cannot be determined.

Background

1727 This is a new provision.

1728 The provisions in Schedule 8 protect qualifying leaseholders from costs associated with historical building safety defects by limiting, or preventing altogether, the costs that can be passed to leaseholders through the service charge by landlords. Paragraph 5 sets out that leaseholders cannot be charged more than the permitted maximum in respect of costs relating to historical building safety defects. As paragraph 8 of the Schedule provides that no service charge is payable in respect of cladding remediation, the permitted maximum costs relate to non-cladding costs only; this includes the costs associated with interim measures like waking watches.

1729 Paragraph 6 sets out the value of the permitted maximum, which varies according to the value of the lease. For most leaseholders, the maximum that they will be able to be charged for costs relating to historical building safety defects is £10,000, or £15,000 for properties in London. Paragraph 4 sets out that qualifying leaseholders in low-value properties (properties worth less than £175,000, or £325,000 in Greater London) will not have to pay any costs towards historical building safety defects. For leaseholders in very high-value properties, the permitted maximum is higher, at £50,000 for leases with a value at the qualifying time of more than £1,000,000, and £100,000 for leases with a value of more than £2,000,000.

1730 The Government has made clear that it is it taking a proportionate approach to the allocation of remediation costs. Where no landlord with an interest in the building was responsible for the defect, and the landlord under the lease cannot afford to meet the costs in full, this proportionate approach involves capped contributions from leaseholders. The capped contributions of £10,000 and £15,000 for most leaseholders represents what the Government considers to be a proportionate and equitable contribution to remediation costs. For leaseholders who are least likely to be able to afford to make a capped contribution, paragraph 4 provides that they are fully protected from all historical building safety costs. Similarly, this paragraph requires those leaseholders who are likely to be able to afford to make a greater contribution to do so.

1731 While leaseholders in shared ownership arrangements are typically liable in full for any service charges, paragraph 6 provides that the capped contribution for shared ownership leases is set in proportion to their total share of the lease at the qualifying time. For example, the permitted maximum of a 50% shared ownership lease would be half the permitted maximum for a 100% owned lease.

1732 This paragraph also makes provision for how the qualifying lease value at the qualifying time is to be determined and sets out that this is to be done by an uprating of the most recent sale price of the property. Further detail of the uprating mechanism will be provided in regulations. This approach to calculating the lease value has been used to give a value which is fixed as of the qualifying time (14 February 2022), to give certainty to leaseholders, as well as landlords and freeholders, as to their levels of liability. The approach uses three pieces of readily available information to determine the lease value: the most recent sale price, the year in which the most recent sale took place, and a numerical "multiplier" for that year, which will be set out in regulations. This negates the need for individual valuations which would be expensive, time-consuming, and would have the potential to be the subject to dispute if the landlord and leaseholder did not agree on the valuation that has been assigned to the property.

1733 The paragraph makes provision for the most recent sale price to be uprated because properties last transacted more recently will, on average, have done so for a higher price than comparable properties that were last sold further back in time due to the inflation of house prices. It is therefore necessary to uprate the most recent property sale value with an appropriate measure of inflation, to ensure that property values can be compared like-for-like, irrespective of when they last sold.

Proposed use of power

1734 The power at sub-paragraphs (6) and (7) will be used to make further provision setting out how the value of the qualifying lease is to be determined.

1735 The regulations will set out a formula by which the value of the qualifying lease at the qualifying time will be calculated, taking account of the most recent sale price of the property, the year in which that sale took place, and a fixed uprating multiplier for that year.

1736 It is intended that the uprating multiplier will be based on the House Price Index published by the Office for National Statistics, which is the measure of house price inflation. The regulations will set out a list of uprating multipliers, one for each year before 2022.

1737 The regulations also allow provision to be made in respect of "prescribed cases". It is intended that these regulations will set out how the value of the qualifying lease is to be determined when the most recent sale price cannot be identified.

Example 1

A qualifying leaseholder's flat in Leeds has a value of £180,000 according to the uprating formula set out in regulations. The leaseholder's permitted maximum is £10,000.

Example 2

A qualifying leaseholder owns a shared ownership lease in London. On 14 February 2022 they had a 50% share in their lease. Their share of the lease has a value of £325,000, according to the uprating formula set out in regulations, meaning that a 100% share would be worth £650,000. As the permitted maximum for a £650,000 lease in Greater London would be £15,000, the shared ownership leaseholder's permitted maximum is £7,500.

Paragraph 7: Annual limit on service charges

Effect

1738 Paragraph 7 provides for an annual limit on service charges in relation to historical building safety defects.

1739 Sub-paragraph (2) defines a "relevant service charge" for the purposes of this paragraph as a service charge under a qualifying lease (to which see section 119) in respect of a relevant measure (to which see paragraph 1) relating to a relevant defect (to which see section 120). This means that a relevant service charge is defined as one relating to historical building safety costs.

1740 Sub-paragraph (1) makes provision for an annual limit on relevant service charges by setting an annual limit on relevant service charges at one tenth of the permitted maximum (to which see paragraphs 5 and 6).

1741 Where a landlord seeks to levy a relevant service charge, then that service charge is only payable if the sum of that particular service charge (as set out in sub-paragraph (1)(a)), and the total amount of relevant service charges payable in the past 12 months (as set out in sub-paragraph (1)(b)), are not higher than one tenth of the permitted maximum. The effect of this provision is that service charges relating to historical building safety defects cannot exceed one tenth of the permitted maximum in any given 12-month period.

Background

1742 This is a new provision.

1743 Paragraphs 5 and 6 make provision for maximum amounts ("the permitted maximum") that landlords can charge to leaseholders in respect of historical building safety defects. For most leaseholders, the permitted maximum is £10,000, or £15,000 for properties in Greater London. This provides for a fair approach to the allocation of remediation costs, such that qualifying leaseholders make a proportionate and equitable contribution to remediation when there is no clear party to pay in full, while being protected from excessive and unaffordable bills.

1744 Paragraph 7 makes provision for the capped leaseholder contributions to be spread over up to ten years, by setting out that service charges relating to historical building safety defects cannot be higher than one tenth of the maximum capped amount in any given 12-month period. For most leaseholders outside of London, this means that maximum payable amount will be £1,000 per year, and £1,500 per year for most leaseholders in London.

1745 The annual limit on the caps represents a maximum, not a target, and landlords will need to provide evidence to leaseholders that work is needed when a service charge is levied (using powers made under paragraph 16 of this Schedule).

1746 This approach is intended to maximise affordability for qualifying leaseholders who can be required to make a capped contribution. Landlords who are responsible for organising remediation work will need to put arrangements in place to begin work and recover capped leaseholder contributions over time.

Example 1

A qualifying leaseholder of a flat in London has a permitted maximum of £15,000. Their landlord can charge up to £1,500 per year towards historical building safety costs. After the cap is reached, the landlord will not be able to charge leaseholders anything more towards historical building safety costs.

Example 2

A qualifying leaseholder of a flat in Newcastle has a permitted maximum of £10,000. The leaseholder paid £2,000 towards cladding costs prior to commencement; this means their remaining maximum liability is £8,000. Going forward, the landlord can charge the leaseholder up to £1,000 per year for eight years in respect of non-cladding costs.

Example 3

A qualifying leaseholder of a flat in Manchester has a permitted maximum of £10,000. The landlord commissions remedial work and charges the leaseholder £1,000 per year for three years to cover the cost of the works. The leaseholder's remaining maximum liability is £7,000. Several years later, further work is identified which falls within scope of the Schedule. The landlord can continue to charge up to £1,000 per year, until the £10,000 cap is met. After the £10,000 cap is met, the landlord cannot make any further service charge demands in respect of historical building safety defects.

Paragraph 8: No service charge payable for cladding remediation

Effect

1747 Paragraph 8 provides for protections for qualifying leaseholders from the costs associated with remediating unsafe cladding by providing that no service charge is payable under a qualifying lease in respect of cladding remediation.

1748 Sub-paragraph (2) defines "cladding remediation". Cladding remediation means the removal or replacement of unsafe cladding from the outer part of an external wall.

Background

1749 This is a new provision.

1750 The provisions in Schedule 8 protect leaseholders from the costs associated with historical building safety defects, defined in paragraph 1 as relevant measures. Paragraphs 5 to 7 make provision for qualifying leaseholder contributions towards relevant measures to be subject to a cap ("the permitted maximum"). This paragraph provides for qualifying leaseholders to be fully protected from the costs associated with cladding remediation. This means that the qualifying leaseholder contribution caps only apply in respect of relevant measures which are not related to cladding remediation costs; in other words, applying to

non-cladding costs, including the remediation of non-cladding defects and the costs associated with mitigating measures such as fire alarms and interim measures like waking watches.

1751 Although this paragraph provides that no cladding costs be charged to leaseholders going forward (i.e., after commencement), any leaseholder contributions towards cladding remediation that have been incurred prior to commencement do count towards the leaseholder contribution caps.

> **Example**
> A qualifying leaseholder of a flat in London has a permitted maximum of £15,000 and has already paid £5,000 towards cladding costs on their building. They are legally protected from cladding costs going forward. The cladding costs that they have already paid out count against their contribution permitted maximum (the "capped" amount). This means that their landlord can charge the leaseholder a maximum of £10,000 towards non-cladding costs. The maximum that the landlord would be able to charge the leaseholder in a 12-month period is £1,500 (one tenth of the permitted maximum of £15,000 for a flat in London).

Paragraph 9: No service charge payable for legal or professional services relating to liability for relevant defects

Effect

1752 Paragraph 9 provides that no service charge is payable by qualifying leaseholders in respect of legal or other professional services in connection with liability for relevant defects. This means that landlords are prevented from passing costs through the service charge to qualifying leaseholders in respect of legal or other professional costs relating to liability for historical building safety costs.

1753 Sub-paragraph (2) sets out further detail as to what the term "services" includes. The reference to services in sub-paragraph (1) includes services provided in connection with obtaining legal advice, court or tribunal proceedings, arbitration, or mediation.

1754 This paragraph captures a wide range of services that may be provided to a relevant landlord in connection with liability for relevant defects. The term "in connection with" means that the services captured under this paragraph are not strictly only those directly referred to in sub-paragraphs (2)(a) to (2)(d). For example, the costs incurred with obtaining expert evidence or testimony in connection with court proceedings would fall under sub-paragraph (2)(b) and would not be chargeable to leaseholders.

Background

1755 This is a new provision.

1756 Where building owners assume new liabilities under the Act, they may wish to seek to recover costs from third parties to meet these liabilities. In addition, section 133 of the Act requires that landlords must exhaust all reasonable avenues for cost recovery before passing

any costs on to leaseholders; this will include any contributions from leaseholders which can be sought up to the "permitted maximum" as provided for in Schedule 8. Landlords may also choose to seek legal advice and other professional services in connection with their liability for relevant defects under the Act.

1757 The Act brings forward a number of provisions which will allow those directly responsible for historical building safety defects to be held to account. This includes the extension of the limitation period under section 1 of the Defective Premises Act (to which see section 135), granting a power to the High Court which removes the protection afforded by special purpose vehicles (to which see sections 130 to 132), and a new cause of action against manufacturers of defective or mis-sold construction products (to which see sections 147 to 150).

1758 The terms of many leases will allow for landlords to pass legal and other professional costs through the service charge. The purpose of Schedule 8 is to protect leaseholders from costs associated with historical building safety defects. Where landlords incur costs in connection with their new liabilities under the Act, this paragraph prevents these costs incurred by landlords from being passed to leaseholders. Without these protections, it would be possible for landlords to pursue spurious or unrealistic legal claims and charge these costs to leaseholders; this paragraph mitigates against that and ensures incentives are aligned by requiring building owners and landlords to absorb the costs of their own legal and other professional advice.

1759 Costs already incurred by leaseholders prior to commencement under this paragraph do not count against the "permitted maximum" totals set out in paragraph 6 (unless those costs are also classified as a "relevant measure" under paragraph 1). However, any costs not yet incurred by leaseholders under this paragraph are not payable from the date of commencement onward, even if those costs were incurred by the landlord prior to commencement.

Example 1

Following the publication of the leaseholder protections provisions, a freeholder of a high-rise building has taken legal advice to assess the extent of its liability for historical non-cladding defects in the building. The landlord cannot pass those costs on to qualifying leaseholders through the service charge as they are caught by paragraph 9.

Example 2

The freeholder of a high-rise building decides to pursue litigation to recover costs from the building's developer in relation to historical non-cladding defects. The freeholder cannot pass any legal costs, or costs associated with taking legal action, to qualifying leaseholders through the service charge.

Paragraph 10: Paragraphs 2 to 4, 8 and 9: supplementary

Effect

1760 Paragraph 10 makes provision supplementary to paragraphs 2 to 4, 8 and 9 which are defined in sub-paragraph (1) as "the relevant paragraphs". These paragraphs set out that certain costs are not payable by leaseholders under service charges and include where the landlord is responsible for a relevant defect (paragraph 2), where the landlord under the lease meets the contribution condition (paragraph 3), where the lease is below a certain value (paragraph 4), in respect of cladding remediation (paragraph 8) and in respect of legal or professional services relating to liability for relevant defects (paragraph 9).

1761 Sub-paragraph (2) provides that where one of the relevant paragraphs provides that a service charge is not payable, those costs cannot be otherwise passed through any service charge or met from a reserve fund.

1762 Sub-paragraph (2)(a)(i) prevents any costs which are subject to the cost protections in the relevant paragraphs from being passed through any service charge mechanism (defined as "the relevant provisions", to which see sub-paragraph (3)). "Relevant costs" has the same meaning as in section 18 of the Landlord and Tenant Act 1985.

1763 "The relevant provisions" are defined in sub-paragraph (3). They are defined as sections 18 to 30 of the Landlord and Tenant Act 1985 which relate to service charges, and section 42 of the Landlord and Tenant Act 1987, which relate to service charges held on trust.

1764 Sub-paragraph (2)(a)(ii) prevents any costs which are subject to the leaseholder protections from being met from a building's reserve fund.

1765 Sub-paragraph (2)(b) provides further protections in respect of service charge amounts and reserve funds. It sets out that, should any payment be made under a lease or met from a reserve fund in respect of a cost which is subject to the leaseholder protections, an adjustment must be made to correct the position. This could be either by reimbursing a leaseholder or reserve fund for the service charge amount or by reducing subsequent service charges payable by leaseholders.

1766 Sub-paragraph (3) also sets out the definition of "relevant reserve funds" which are protected from being used to meet costs relating to relevant defects. These are a trust fund as defined by section 42 of the Landlord and Tenant Act 1987 or any other fund which is made up of payments from leaseholders for the purposes of meeting costs in connection with the building, such as for the maintenance of the building.

1767 Sub-paragraph (4) contains a power to expand the provisions in paragraph 10 to non-residential leases.

Background

1768 This is a new provision.

1769 Paragraph 10 ensures that where the relevant cost protections apply, the costs cannot be passed on to leaseholders, either by means of service charge demands or met from a reserve fund.

1770 The law relating to service charges in multi-occupied residential buildings is set out in sections 18 to 30 of the Landlord and Tenant Act 1985. Section 18 of that Act defines "relevant costs" as costs incurred by the landlord in connection with matters for which the service charge is payable. This paragraph provides that, where the relevant cost protections under the Schedule apply, those costs cannot be passed through the service charge.

1771 It is common practice for multi-occupied residential buildings to maintain reserve funds. Leaseholders pay into the reserve fund, which is set aside to pay for the costs of major works. These funds are usually held on trust. The law governing service charge contributions held on trust is set out in section 42 of the Landlord and Tenant Act 1987. Paragraph 10 sets out that, where the relevant protections apply, those costs cannot be met from a reserve fund. This provision applies equally to reserve funds which are caught by section 42 of the Landlord and Tenant Act 1987, as well as to any other types of funds into which leaseholders have paid.

Proposed use of power

1772 The power at sub-paragraph (4) will be used to expand the protections to non-residential leases. While service charges and reserve funds in respect of residential leases are governed by the Landlord and Tenant Act 1985 and the Landlord and Tenant Act 1987, there is no equivalent overarching legislation governing these matters for non-residential leases.

1773 Paragraph 2 of Schedule 8 applies equally to non-residential leases as it does to residential leases. This means that where a landlord for the building was responsible for the defect, no service charges relating to that defect can be passed to any leaseholder, including non-residential leaseholders. The power at sub-paragraph (4) will be used to make provision setting out that in this situation, costs cannot be met by service charges payable by commercial leaseholders or by reserve funds into which commercial leaseholders may have made payments.

> **Example**
>
> The landlord for a high-rise building is linked to the developer and so cannot pass on any costs to leaseholders relating to defects connected with the initial construction of the building. Paragraph 10 prevents the landlord from meeting any of the costs for remediation of those defects from the building's reserve fund.

Paragraph 11: No increase in service charge for other tenants

Effect

1774 Paragraph 11 provides that no leaseholder, whether a qualifying or non-qualifying leaseholder, can be charged more than they otherwise would have been in the absence of the leaseholder protections for costs relating to historical building safety defects.

1775 Sub-paragraph (a) defines "the original amount" as the amount that would have been payable by a leaseholder in the absence of the provisions in Schedule 8 applying.

1776 Sub-paragraph (b) sets out that where a greater amount than the original amount would be payable under a lease of a premises in a relevant building (to which see section 117) as a result of Schedule 8 applying, then the amount that is payable is the original amount.

1777 This paragraph applies to all costs to which Schedule 8 applies including costs associated with cladding and non-cladding defects, to interim measures, and to costs relating to legal or professional services.

Background

1778 This is a new provision.

1779 The leaseholder protections in Schedule 8 protect leaseholders by limiting or preventing altogether costs relating to historical building safety defects being passed through the service charge.

1780 In a given building, different protections can apply to different leases. For example, some leaseholders may be protected from all costs, others may be subject a capped contribution, and others may not be eligible for the cost protections.

1781 When work is undertaken to the building, how much each leaseholder will ordinarily be liable to pay will be governed by the terms of the leases. In some buildings, costs might simply be evenly split among all leaseholders; other buildings may have more complicated arrangements for dividing the costs.

1782 Paragraph 11 ensures that, where leaseholders in a building have their liability removed or reduced, that these costs are not simply reallocated to other leaseholders. The paragraph makes clear that no leaseholder can be charged more than they would have been in the absence of the protections.

1783 The provisions in this paragraph mean that any amount that is not recoverable under a lease from a leaseholder as a result of Schedule 8 is reallocated to relevant landlords for the building (see paragraph 2 for the definition of "relevant landlord") and cannot be reallocated to other leaseholders in the building.

> **Example**
> A high-rise building in Greater London contains 20 units of which 15 are qualifying leases and five are non-qualifying leases. The 15 qualifying leases are all worth less than £325,000 and so are protected from all costs relating to historical building safety defects. £200,000 of remediation is required for the building and the terms of the leases provide that any costs are to be divided equally among leaseholders, equating to a contribution of £10,000 per lease. The 15 qualifying leaseholders are fully protected from costs and so cannot be required to pay anything by their freeholder. Paragraph 11 provides that the five non-qualifying leaseholders cannot be charged more than they would have been in the absence of the protections, meaning that they can each be asked to contribute no more than £10,000 by their freeholder. Accordingly, the remaining £150,000 of liability moves to the freeholder of the building.

Paragraph 12: Recovery of service charge amounts from landlords

Effect

1784 Paragraph 12 creates a power to make regulations prescribing how service charge amounts that are not recoverable from leaseholders are to be met.

1785 Sub-paragraph (1) sets out that amounts that are not recoverable from leaseholders are to be met by relevant landlords prescribed by the regulations.

1786 Sub-paragraph (2) sets out the meaning of "relevant landlord". A "relevant landlord" means the landlord under a lease and any superior landlord. This term includes freeholders, head lessees and any other landlords who hold superior leases over all or part of the building.

1787 Given that the definition includes the landlord under "a lease", this means that any landlord with a superior lease over any part of the building will be a relevant landlord. In mixed-use buildings it includes landlords who hold superior leases over both residential and commercial parts of a building, including landlords who hold leases over solely commercial premises. The term "relevant landlord" does not include resident management and right to manage companies.

Background

1788 This is a new provision.

1789 Schedule 8 provides that certain service charges are not payable under leases in respect of relevant measures (to which see paragraph 1 of Schedule 8) relating to relevant defects (to which see section 120). Where service charge amounts are limited by the Schedule, the landlord under the lease will be legally prevented from recovering those costs from leaseholders.

1790 Paragraph 12 creates a power for the Secretary of State to make regulations setting out who meets the costs that are not recoverable from leaseholders, representing a reallocation of liability that would previously have been attributable to leaseholders. The paragraph makes clear that it is the "relevant landlords" for the building that will need to meet these costs and a definition of "relevant landlord" is provided.

1791 The explanatory note to section 116 sets describes the ownership structures of multi-occupied residential buildings. In the most straightforward cases, there will be a freeholder who owns the land and the building itself, and leaseholders who own the long leases of dwellings contained within the building.

1792 The ownership structures of buildings can be, and often are, significantly more complex, with multiple layers of demised lease interests in the building. In some situations, the freeholder will own the land on which the building sits, but the ownership of the building itself will have been demised to another party, such as a head lessee. In more complex scenarios, head lessees can then demise the building or parts of it to other superior landlords. In turn these superior landlords can further demise leases to other superior landlords. Different parts of the building (e.g., different floors of a block of flats) can have different superior landlords. Such ownership structures will vary significantly from building to building. The leaseholder protections provisions in the Act have been designed so that they apply equally to simple and complex ownership structures.

1793 Such complex arrangements can be thought of as "chains" of demised leases. The leaseholder of the individual unit will have a lease agreement with the superior landlord at the bottom of such a lease chain. As such, the chain of leases has the leaseholder of the residential (or commercial) unit at the bottom of the chain and the freeholder (of the land, or of both the building and the land) at the top.

1794 Sub-paragraph (2) provides a definition of "relevant landlord" as the landlord under a lease and any superior landlord. This term captures all landlords with a superior lease interest in any part of the building. Resident management and right to manage companies are not caught by the definition because they are not landlords for the building and do not hold leases over it. The "landlord under the lease" will be the landlord with whom the leaseholder has their lease agreement directly. Any landlord above the landlord under the lease in the lease chain will be a "superior landlord".

1795 The power at paragraph 12 allows all relevant landlords for a relevant building to be allocated liability. As discussed in the explanatory notes to paragraphs 2 and 3, in the first instance, those who are responsible for the defects, and those who can afford to bear the costs in full, are required to do so first. If neither of these conditions are met, some costs can be recovered from some qualifying leaseholders (paragraphs 5 to 7). The remaining costs, that would otherwise have been attributable to qualifying leaseholders, will be spread equitably among all relevant landlords for the building.

1796 The provisions take a proportionate approach by ensuring that, where there is no clear party to bear the costs in full, an equitable spread of costs is achieved; this includes contributions from leaseholders and from all relevant landlords for the building. This approach has been taken because all relevant landlords will have a stake in the building and thus derive profit from it; as such, it is only fair that all such parties are allocated a share of liability to fix the building in which they have an interest.

1797 While Schedule 8 removes liability from leaseholders and paragraph 12 creates powers to formally reallocate that liability to relevant landlords, that does not mean that relevant landlords will always need to bear these costs in practice. . The Act contains significant wider powers that will allow building owners and landlords to seek to recover costs from those directly responsible for historical defects. Where cost recovery is not possible, Schedule 8 and the regulations made under the powers in paragraph 12 will provide for an equitable distribution of liability across leaseholders and all relevant landlords for the building.

Proposed use of power

1798 The power at paragraph 12 will allow all regulations to be made allocating liability that is not recoverable from qualifying leaseholders to all relevant landlords for the building. To which parties the regulations allocate liability will vary according to the circumstances pertaining to that building. The Government's approach in Schedule 8 sets out a clear hierarchy of liability for costs; the regulations made under this paragraph will give full effect to that hierarchy.

1799 In the first instance, those responsible for relevant defects will be required to pay for them. Paragraph 2 of Schedule 8 sets out that no service charge is payable under any lease where a relevant landlord was responsible for the defect. Regulations will make clear that it is the relevant landlord who was responsible for the defects that is liable to meet these costs; this provision will be important to make clear who is liable to meet costs where there are multiple relevant landlords for a building, some of whom are not responsible for the defects.

1800 Paragraph 3 sets out that no service charge is payable under a qualifying lease when the landlord under the lease meets the contribution condition. Similarly, regulations will make clear that it is the landlord that meets the contribution condition that is liable to meet the costs that would otherwise have been attributable to qualifying leaseholders.

1801 Paragraphs 4 to 7 set out the protections that apply to leaseholders where paragraphs 2 and 3 do not apply. Where paragraphs 4 and 7 apply, regulations will provide that all costs which cannot be recovered from leaseholders will be divided equitably among all relevant landlords for the building. The mechanism for division of costs will be set out in regulations and will provide that relevant landlords' contributions will be proportionate to their level of interest in the building. For example, a landlord with a superior lease over the entire building will pay a greater proportion of costs than a landlord with a superior lease over just one floor.

Example

A ten-storey block of flats in Leeds has a freeholder, a head lessee, and two further superior landlords; one for the upper five floors and one for the lower five floors. No landlord is linked to the developer or meets the contribution condition. A contribution from each qualifying leaseholder whose property is worth above £175,000 of £10,000 can be recovered, but these costs must be spread over ten years. Any historical building safety costs that cannot be recovered from leaseholders will be allocated to the relevant landlords for the building according to the regulations made under paragraph 12. The freeholder and head lessee, who have an interest in the entire building, will pay a greater contribution than the two other superior landlords, who only have an interest in part of it.

Paragraph 13: Presumption: qualifying lease

Effect

1802 Paragraph 13 makes provision about the determination of whether a lease is a qualifying lease according to section 119. The effect of this paragraph is to require that the leaseholder provides documentation to their landlord demonstrating that their lease is qualifying. It also provides that the landlord may not assume a lease is non-qualifying until they have exhausted attempts to determine otherwise.

1803 Sub-paragraph (3) makes provision for a "qualifying lease certificate". The certificate is a document provided by the leaseholder to the landlord demonstrating the qualifying lease status. A "qualifying lease certificate" confirms that, at the qualifying time (to which see section 119) the lease in question was a qualifying lease.

1804 Sub-paragraph (3) states that the certificate must comply with any "prescribed requirements". This means that requirements that the certificate must meet may be set out in regulations made by the Secretary of State.

1805 Sub-paragraph (4) sets out further detail as to what the prescribed requirements in the regulations may include. These are: the information that is to be provided by the leaseholder in the certificate; the form of the certificate, meaning the way in which the certificate and the information contained within it are to be presented; and the execution of the certificate, meaning the way in which the certificate is to be provided, including any relevant timescales.

1806 Sub-paragraph (2) makes provision about a "presumption" in relation to the qualifying lease and in connection with the qualifying lease certificate. Sub-paragraph (2) sets out that a lease is to be treated as being a qualifying lease unless the landlord has sought to obtain a certificate from the leaseholder and has been unable to do so. The sub-paragraph states that the landlord must take all reasonable steps to obtain the certificate; the sub-paragraph also contains a power for the Secretary of State to prescribe, in regulations, the steps that the landlord must take in attempting to obtain the certificate.

Background

1807 This is a new provision.

1808 Section 119 defines a qualifying lease for the purpose of the leaseholder protections. Whether a lease is qualifying is determined according to its ownership at the qualifying time, which is the start of 14 February 2022. As set out in the explanatory note to section 119, the qualifying lease status is automatically transferred to future buyers of the property.

1809 Whether a lease is qualifying determines whether the lease, and therefore the tenant under the lease (the leaseholder), qualifies for the leaseholder protections set out in Schedule 8. Not all leases will be qualifying. It is important that leaseholders and landlords have clarity on the position. Landlords will need to know which leases in their building are qualifying, as that will determine the extent to which they are legally permitted to pass costs on to leaseholders through the service charge. Leaseholders will need to know whether they are the owner of a qualifying or non-qualifying lease as this will determine what they can be charged by their landlords; potential purchasers of leases will also need to understand whether the lease they may wish to purchase is qualifying.

1810 The qualifying lease certificate is the formal means by which qualifying lease status is demonstrated and recorded; to this end appropriate evidence will need to be provided by the leaseholder to the landlord when the certificate is executed; this will ensure that the landlord has confidence that the information provided in the certificate is accurate. The landlord will need to accept the certificate, once executed, at face value. However, it will be made clear to leaseholders that they must provide information that to the best of their knowledge is true, and that knowingly failing to do so is a criminal offence. No express provisions are made in relation to such conduct; there is no need to make express provision as criminal behaviour can be addressed in the usual way.

1811 Whether a lease is qualifying depends on the ownership of the lease at the qualifying time, not on the date on which the certificate is executed. As such, the qualifying lease certificate will be an important legal document that will need to be securely kept and transferred to future owners of the lease on sale.

1812 The presumption relating to the qualifying lease ensures that landlords take a reasonable approach to recovery of costs relating to historical defects. The presumption means that a landlord may only treat a lease as non-qualifying once they have taken steps to obtain the qualifying lease certificate from the leaseholder. This prevents landlords from continuing to issue bills to leaseholders in the interim while the qualifying lease status is established.

1813 Where the landlord has exhausted all reasonable steps and complied with all prescribed steps to obtain a qualifying lease certificate and has been unsuccessful, then the landlord may assume the lease is non-qualifying until such a time as a valid qualifying lease certificate is provided.

Proposed use of power

1814 The power at sub-paragraph (2)(a) will be used to set out the steps that the landlord must take when attempting to obtain a qualifying lease certificate from the leaseholder.

1815 The power at sub-paragraph (3) will be used to prescribe requirements relating to the qualifying lease certificate, including the information that is to be contained within it, the form of the certificate, and the way in which the leaseholder is required to execute the certificate.

> **Example**
> The landlord in a relevant building becomes aware of a relevant defect. The landlord must assume that a lease is qualifying until they have taken all reasonable steps and complied with any prescribed steps to secure a qualifying lease certificate from the leaseholder.

Paragraph 14: Presumptions relating to landlord under qualifying lease

Effect

1816 Paragraph 14 makes provision about the determination of whether a landlord for a relevant building meets the contribution condition and whether a relevant landlord is responsible for relevant defects.

1817 Sub-paragraph (1) makes provision in connection with the contribution condition (to which see paragraph 3 of Schedule 8). It sets out that the landlord under the qualifying lease is to be treated as having met the contribution condition unless they have provided a certificate to the leaseholder which complies with prescribed requirements. This has the effect of requiring the landlord to provide a certificate demonstrating that they do not meet the contribution condition before being able to pass on costs to qualifying leaseholders.

1818 Sub-paragraph (2) provides a power which allows provision analogous to that set out in sub-paragraph (1) to be made in respect of demonstrating that a landlord was not responsible for specified relevant defects (to which see paragraph 2 of Schedule 8). The power will allow regulations to be made setting out that the landlord is treated as being responsible for identified relevant defects according to paragraph 2 unless they have provided a certificate demonstrating that they were not responsible for the defects.

1819 Sub-paragraph (1) states that the certificate must comply with any "prescribed requirements". This means that requirements that the certificate must meet may be set out in regulations made by the Secretary of State. Sub-paragraph (3) sets out further detail as to what the prescribed requirements in the regulations may include. These are: the information that is to be provided by the landlord in the certificate; the form of the certificate, meaning the way in which the certificate and the information contained within it are to be presented; and the execution of the certificate, meaning the way in which the certificate is to be provided, including any relevant timescales.

Background

1820 This is a new provision.

1821 Paragraphs 2 and 3 of Schedule 8 set out the circumstances in which landlords of relevant buildings are prevented from passing on any costs to leaseholders. Under paragraph 2, if a landlord was responsible for a relevant defect, they may not pass on any costs to any leaseholders in the building. Under paragraph 3, if the landlord under the lease meets the contribution condition, they will not be able to pass on any costs to qualifying leaseholders. The tests under paragraphs 2 and 3 apply at the qualifying time. For example, the conditions at paragraph 3 are satisfied if the landlord at the qualifying time met the contribution condition. If that landlord subsequently sells their interest in the building, the new owner of the interest in the building assumes the liabilities of the previous landlord and thus is treated as having met the contribution condition. In other words, new landlords assume the liability of the landlords as at the qualifying time.

1822 Whether a landlord was responsible for a given relevant defect, and whether they met the contribution condition, will most likely not be publicly available information. Whether a landlord was responsible for given relevant defect according to paragraph 2 will require information about the works in question that gave rise to the relevant defect. Whether a landlord met the contribution condition will require information about the structure of the landlord group, the financial position of the landlord and its group, and other relevant buildings owned by the landlord and its group. The landlord will therefore need to provide this information to leaseholders.

1823 Paragraph 14 and regulations made under it (as well as paragraph 16) will ensure full transparency in respect of this information. Full transparency is important as the information needed to determine whether the conditions at paragraphs 2 and 3 are met will not be readily available to leaseholders. Where building owners and landlords have used complex or opaque group structures, it would be possible to obscure the true picture without stringent transparency requirements.

1824 Paragraph 14 creates a presumption that the landlord is treated as having met the contribution condition unless they provide leaseholders with proof that they do not meet the contribution condition. This proof is to be provided in the form of a certificate which must comply with prescribed requirements. This means that the landlord under the lease will not be able to pass costs on to qualifying leaseholders until they have provided evidence to leaseholders proving that they did not meet the contribution condition. If the landlord does not provide this information, the landlord is legally treated as having met the contribution condition. Regulations will make analogous provision in respect of proving that a landlord was not responsible for relevant defects according to paragraph 2.

1825 If the leaseholder is not satisfied that the information provided by the landlord proves that they do not meet the contribution condition or was not responsible for the defect, they will be able to challenge this at the First-tier Tribunal. As with the provision of the qualifying lease certificate by the leaseholder under paragraph 13, knowingly providing false or misleading information is a criminal offence.

Proposed use of power

1826 The power at sub-paragraph (1) will be used to prescribe requirements relating to the certificate provided by the landlord, including the information that is to be contained within it, the form of the certificate, and the way in which the landlord is required to execute the certificate.

1827 The power at sub-paragraph (2) will be used to make provision which requires that a certificate is provided to leaseholders evidencing that the landlord was not responsible for given relevant defects, and that the landlord is to be treated as being responsible for creating the relevant defects unless such a certificate is provided.

> Example
> The freeholder of a building is part of a complex wider group structure. Before the freeholder of the building can pass on any costs relating to relevant defects to qualifying leaseholders, they must provide a certificate to leaseholders evidencing that they do not meet the contribution condition (that is, that, at the qualifying time, the landlord group had a net worth of less than £2,000,000 per relevant building owned by the group). If the certificate is not provided, or the certificate does not comply with prescribed requirements (which will be set out in regulations) then the landlord is treated as having met the contribution condition; this means that no costs relating to relevant defects can be passed on to qualifying leaseholders.

Paragraph 15: Information from tenants

Effect

1828 Paragraph 15 creates a power which allows the Secretary of State to make regulations requiring that qualifying leaseholders give prescribed information and documents to the landlord under their lease or any superior landlord.

1829 Sub-paragraph (2) sets out that the regulations can set out how the information or documents referred to in the regulations are to be provided.

Background

1830 This is a new provision.

1831 Paragraph 13 of Schedule 8 makes provision for the leaseholder to provide a qualifying lease certificate to their landlord, or any superior landlord, demonstrating that they are the owner of a qualifying lease. As discussed in the explanatory note to paragraph 12, superior landlords include any landlord with a superior lease over all or part of the building; this includes landlords such as the head lessee or freeholder.

1832 Regulations made under paragraph 13 will set out the information that is to be contained in the certificate, and the certificate's form and execution.

1833 Regulations made under paragraph 15 will set out the information and documents that the qualifying leaseholder needs to provide to the landlord. Suitable evidence will need to be provided alongside the qualifying lease certificate supporting the self-certification of the lease as qualifying.

1834 There are other important factors relating to the qualifying lease that will need to be ascertained in determining the qualifying leaseholder's potential liability (if any). Paragraphs 4 to 6 of Schedule 8 set out that the maximum qualifying leaseholder liability varies according to the value of the qualifying lease at the qualifying time. For example, a qualifying leaseholder outside Greater London is protected from all costs relating to relevant defects if the lease is worth less than £175,000. Paragraph 6(7) sets out that the value of the qualifying lease is determined according to regulations and is based on the most recent resale price of the property and the year in which that sale took place. Both the leaseholder and the landlord will need to know the value of the qualifying lease so that the landlord is aware of what costs they can pass on to the leaseholder, should they be entitled to do so (i.e., where no landlord for the building was responsible for the defects and where the landlord does not meet the contribution condition). The leaseholder will therefore need to provide information about the property's most recent sale price and date to the landlord.

1835 In addition, paragraph 6(5) sets out that, for shared ownership leases, the permitted maximum is calculated in proportion to the leaseholder's equity stake in the property. This information will also need to be provided to the landlord so that the landlord can determine what costs they can pass on to the shared ownership leaseholder.

Proposed use of power

1836 The power at paragraph 15 will be used to prescribe any relevant documents that need to be provided by qualifying leaseholders to their landlord alongside the qualifying lease certificate (to which see paragraph 13). This will ensure suitable and appropriate documents demonstrating that the lease is a qualifying lease are provided to the landlord.

1837 In addition, the power will be used to prescribe the information and documents that need to be provided by qualifying leaseholders to their landlord evidencing the most recent sale price of the property, and the year in which it was sold; this will allow the landlord to determine the value of the qualifying lease.

1838 Where the qualifying lease is a shared ownership lease, the power will be used to prescribe the information and documents that need to be provided evidencing the equity stake in the lease that the leaseholder had at the qualifying time.

Example 1

A qualifying leaseholder needs to evidence to the landlord the value of their lease at the qualifying time. Under the regulations made under paragraph 15, they will need to provide to their landlord evidence of the most recent sale price of the property, and the year in which that sale took place. This will allow the leaseholder and the landlord to determine the value of the qualifying lease.

Example 2

A qualifying leaseholders owns a shared ownership lease. They will need to provide evidence to the landlord of the value of their lease and the equity share at the qualifying time. Under the regulations made under paragraph 15, they will need to provide to their landlord the most recent sale price of the lease, the year in which that sale took place, and the equity share of the property. This will allow the leaseholder and the landlord to determine the value of the qualifying lease and the capped leaseholder contribution that applies to that lease (which will be determined in proportion to the leaseholder's share in the lease at the qualifying time).

Paragraph 16: Information from landlords

Effect

1839 Paragraph 16 creates powers which allow regulations to be made requiring landlords of a relevant building (to which see section 117) to provide information and documents to certain other parties.

1840 Sub-paragraph (1) sets out that the Secretary of State may make regulations requiring a relevant landlord to give information or documents to a relevant tenant or to another person prescribed by the regulations.

1841 "Relevant landlord" is defined for the purposes of paragraph 16 in sub-paragraph (8) as a landlord under a relevant lease, where a "relevant lease" is further defined as a lease of a premises in a relevant building. As such, a relevant landlord for the purposes of paragraph 16 is any landlord under lease of a premises in a relevant building. The term "relevant landlords" includes the freeholder, any head lessee, and any further superior landlords.

1842 "Relevant tenant" is defined in sub-paragraph (8) as a tenant under a relevant lease. As explained above, a "relevant lease" is a lease of any premises in a relevant building. This means that paragraph 16 applies to any leaseholder in a relevant building, not just qualifying leaseholders.

1843 Sub-paragraph (1) states that the regulations may require that information or documents may be provided to an "other prescribed person", as well as to a relevant tenant, where "prescribed" means prescribed in the regulations.

1844 Sub-paragraph (2) sets out that the information and documents prescribed in the regulations can relate to any part of Schedule 8 and sub-paragraph (3) allows the regulations to set out how the information or documents are to be provided; this includes the timescales within which they are to be sent and the format in which they are to be provided.

1845 Sub-paragraphs (4) to (7) make provision for the situation in which a relevant landlord fails to comply with the regulations. Sub-paragraph (4) provides that where the regulations are not complied with, that the regulations may provide for prescribed costs (where "prescribed" means prescribed in the regulations) not to be payable under the service charge or to be met from a reserve fund. This means that where the landlord does not comply with the information sharing regulations made under paragraph 16, the landlord may be prevented from passing on certain costs to leaseholders through the service charge under the regulations. Sub-paragraph (4)(a) achieves this by providing for prescribed costs not to be regarded as relevant costs when calculating the service charge, where "relevant costs" has the same meaning as in section 18 of the Landlord and Tenant Act 1985; and by providing that they cannot be met from a relevant reserve fund, where "relevant reserve fund" has the same meaning as in paragraph 10 of Schedule 8.

1846 Sub-paragraph (5) creates a power to make regulations for and in connection with an application to the First-tier Tribunal should a landlord fail to comply with the regulations. Sub-paragraph (5) sets out that an application can be made to the Tribunal for an order determining whether the landlord has complied with the regulations. If the landlord has not complied, the Tribunal may order the landlord to provide information or documents under the regulations.

Background

1847 This is a new provision.

1848 Paragraph 15 creates a power to make regulations requiring information to be provided by the leaseholder to the landlord. Paragraph 16 contains analogous powers allowing regulations to be made setting out information that is to be provided by landlords.

1849 Paragraph 16 allows the regulations to specify that information and documents are to be given to leaseholders, as well as to prescribed persons. As discussed in the explanatory note to paragraph 12, a building can have multiple relevant landlords, for example a freeholder and a head lessee and multiple additional superior landlords. As well as sharing information between landlord and tenant, where there are multiple relevant landlords for a building it will be necessary for relevant landlords to share information between themselves. The power also allows for other persons to be prescribed in the regulations.

1850 Several key pieces of information will need to be provided by the landlord to tenants. Paragraph 14 makes provision in connection with a certificate that needs to be provided to tenants demonstrating that the landlord was not responsible for given relevant defects and does not meet the contribution condition. Regulations made under paragraph 14 will require the landlord to provide a certificate of a prescribed form to the leaseholder; paragraph 16 will allow regulations to be made requiring evidence in support of the information contained within the certificate to be provided.

1851 Other information not directly connected to the certificate in paragraph 14 will also need to be provided by the landlord to the tenant. In particular, paragraph 5 sets out that costs for relevant measures relating to relevant defects incurred in the five years leading up to commencement count towards the permitted maximum caps set out in paragraph 6. The landlord will need to inform leaseholders of any costs that have been incurred to date, and of the leaseholders' maximum liability going forward.

1852 As well as providing information to tenants, relevant landlords for the building will also need to share information among themselves and the powers at paragraph 16 allow regulations to be made providing for this.

Proposed use of power

1853 The power at paragraph 16 will be used to make regulations requiring information and documents to be provided by landlords to leaseholders. This information will need to be provided alongside the landlord certificate mentioned in paragraph 14. Landlords will also be required to provide information in respect of costs incurred by leaseholders in the five years leading up to commencement in respect of relevant measures. Where a relevant building has multiple relevant landlords, provision will also be made requiring the sharing of information between such landlords. Provision will also be made in connection with an application to the First-tier Tribunal should the landlord fail to comply with the regulations made under paragraph 6.

> ### Example
> Following the leaseholder protections coming into force, the landlord must determine the costs that leaseholders have paid out in the five years leading up to commencement. Leaseholders in a ten-storey building in Manchester have each been towards a waking watch patrol. Following commencement, the landlord informs qualifying leaseholders in the building that they have each paid £2,000 to date in costs towards the waking watch. The landlord informs leaseholders that this means their maximum liability going forward in respect of historical building safety defects is £8,000.

Paragraph 17

Effect

1854 Paragraph 17 amends new subsection 6A of section 21 of the Landlord and Tenant Act 1985. New subsection 6A is inserted by section 112 of this Act (the Building Safety Act 2022).

1855 New subsection 6A of the Landlord and Tenant Act, as inserted by section 112 of this Act, provides that any regulations made under section 21 in connection with relevant buildings (to which see section 117 of this Act) do not need to include provision mention in subsections (2) and (3) of section 21.

Background

1856 This paragraph amends the Landlord and Tenant Act 1985.

1857 Section 21 of the Landlord and Tenant Act 1985 allows regulations to be made in connection with the provision of service charge information by landlords to leaseholders. Regulations under section 21 may be used in connection with the leaseholder protections provisions in requiring the landlord to provide information to leaseholders in respect of service charges which are subject to the leaseholder protections in Schedule 8.

1858 Subsection (2) of that section requires that the landlord must provide certain information to the tenant. Subsection (3) requires the landlord to provide a report to the leaseholder. Paragraph 17 disapplies these subsections in respect of regulations made under section 21 where the regulations relate to relevant buildings (as defined in section 117).

Paragraph 18: Anti-avoidance

Effect

1859 Paragraph 18 is an anti-avoidance provision. Paragraph 18 has the effect of voiding any contract or agreement which seeks to limit or override any of the provisions in Schedule 8.

1860 The paragraph makes clear that paragraph 18 has effect in respect of contracts and agreements "whenever made". This means that paragraph 18 applies in respect of contracts and agreements entered into both before and after commencement of the paragraph.

Background

1861 This is a new provision.

1862 Paragraph 18 ensures that the leaseholder protections provisions in this Schedule cannot be circumvented by contracts or agreements that seek to limit their effect.

1863 This means that, for example, if a leaseholder enters into a contract with their landlord agreeing to pay more than they are required to under this Schedule, that the terms of the contract purporting to require that are voided – the leaseholder cannot be required by any contract to pay more than they are required to under the Schedule.

1864 The provision applies equally to contracts that were entered into prior to the commencement of the provision. For example, if leaseholders had agreed in the past to pay their freeholder more than they are required to under this Schedule, then from the date on which the provision commences, that agreement is void and the leaseholders cannot be required to pay more than this Schedule dictates.

Example

In 2018, the leaseholders of a ten-storey block in Birmingham agreed to pay their freeholder £2,000 per year over ten years to remediate unsafe cladding. At the point of commencement of the provision, the leaseholders had paid £8,000 to remediate the cladding. Schedule 8 dictates that qualifying leaseholders cannot be charged for cladding remediation, that the non-cladding cap for leaseholders outside of London is £10,000, and any cladding or non-cladding costs paid in the past five years count towards the cap. Paragraph 18, when commenced, automatically voids the agreement the leaseholders entered into where that agreement seeks to restrict the provisions in the Schedule. This means that the qualifying leaseholders cannot be charged anything more for cladding remediation, as paragraph 8 of the Schedule specifically prohibits this. Because the leaseholders have each paid out £8,000 to date, their maximum liability in respect of non-cladding defects going forward is £2,000. Their freeholder would be entitled to charge them up to £1,000 (one tenth of the permitted maximum of £10,000) in respect of relevant measures relating to relevant defects, provided that those relevant measures do not relate to the remediation of unsafe cladding.

Schedule 9: The New Homes Ombudsman scheme

Effect

1865 This schedule sets the requirements of the New Homes Ombudsman scheme by outlining the provisions that the New Homes Ombudsman scheme must include, and the forms of redress the New Homes Ombudsman scheme can specify. It also contains further provision about the New Homes Ombudsman scheme, for instance allowing the scheme to provide for different categories of members.

1866 The scheme requirements must include matters such as the appointment of the New Homes Ombudsman, and how to become and remain a member. The process of becoming a member may include the payment of member fees and the provision of information, and a requirement for members of the scheme to have their own procedures for the handling and resolution of complaints (and a requirement to publish those procedures). The scheme may include different requirements for different categories of member, including as regards fees. If the scheme is maintained by the Secretary of State or by a person acting on their behalf, the fees may be calculated in relation to the cost incurred in operating the scheme as a whole. If the scheme is maintained by a third-party provider, fees may be set at a higher level to enable a profit to be made by the scheme operator.

1867 The scheme must set out the matters about which complaints can be made, and the procedure for making complaints. The scheme may allow complaints relating to non-compliance with a code of practice and must require the New Homes Ombudsman to have regard to any code of practice approved or issued under section 142 when determining complaints. A fee must not be required to make a complaint against a member of the scheme. The procedure for making complaints may differ between categories of members and may include the use of a scheme member's internal complaints handling procedure.

1868 The scheme must include provision about investigating and determining complaints. This must include provision requiring the New Homes Ombudsman to have regard to any code of practice approved or issued under section 142 when determining a complaint, a requirement of members to provide information, and for the New Homes Ombudsman to require members of the scheme to resolve complaints through one or more of the forms of redress listed in this schedule.

1869 The scheme must include provision about how it will enforce determinations made by the New Homes Ombudsman, which may include provision for the expulsion of a member of the scheme, provided that in such instances it also sets out the circumstances in which an expelled member may re-join the scheme.

1870 The scheme must allow for the New Homes Ombudsman to make recommendations, where widespread unacceptable standards of conduct or standards of quality of work are identified amongst members of the scheme, about changes that members may make in order to improve those standards. The scheme must include how it accepts and handles complaints transferred from a predecessor New Homes Ombudsman scheme where that predecessor scheme no longer exists.

1871 The scheme must also set out how complaints can be made against the New Homes Ombudsman scheme itself, how a third party scheme provides information to the Secretary of State, the Scottish and Welsh Ministers and the relevant Northern Ireland department, and how the New Homes Ombudsman scheme reports its activity. The relevant Northern Ireland department is the department of the Northern Ireland Executive designated by the First Minister and deputy First Minister in Northern Ireland, acting jointly.

1872 Where jurisdiction falls to more than one redress scheme, the scheme may include provision about co-operation with persons exercising functions under other redress schemes. In particular, the scheme may include provision about working jointly with a person exercising functions under another redress scheme, including the making of joint determinations with another independent person under another redress scheme.

Background

1873 These are new provisions.

Example

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 requirements set out under this schedule.

These requirements are intended to help consumers know how to access the scheme and how complaints will be handled, including when the New Homes Ombudsman must have regard to a code of practice and what determinations the New Homes Ombudsman can make to resolve issues, such as the award of 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 Secretary of State, the Scottish and Welsh Ministers and the relevant Northern Ireland department when the scheme is not run by the UK Government, and the reports that it makes, which could be annual reports or case reports to highlight and recommend improvements. The scheme may include further provision not set out in the schedule.

Schedule 10: Amendments in connection with the new homes ombudsman scheme

Effect

1874 This schedule contains amendments to other legislation as a result of the establishment of the new homes ombudsman scheme.

Background

1875 The Government expect the New Homes Ombudsman to co-operate with other redress schemes. Schedule 9 paragraph 14 provides for the New Homes Ombudsman scheme itself to cover co-operation with other redress schemes. Where jurisdiction falls to more than one redress scheme, the scheme may include provision about a person exercising functions under the New Homes Ombudsman scheme working jointly with a person exercising functions under another redress scheme, including the making of joint determinations with another independent person under another redress scheme.

1876 This schedule includes amendments to the Local Government Act 1974 and the Housing Act 1996 to facilitate co-operation and joint investigations between the Local Government and Social Care Ombudsman or the Housing Ombudsman and the New Homes Ombudsman and New Homes Ombudsman scheme provider.

1877 The Local Government and Social Care Ombudsman would be required to consult the New Homes Ombudsman when it is investigating matters which it believes could be the subject of a New Homes Ombudsman investigation, and in that scenario to explain to complainants how to make complaints to the New Homes Ombudsman scheme if necessary. It places the New Homes Ombudsman under a similar duty when investigating a matter which that Ombudsman believes could fall within the jurisdiction of the Local Government and Social Care Ombudsman. The schedule also allows for joint investigations with the New Homes Ombudsman, and for arrangements for these ombudsmen and the New Homes Ombudsman scheme provider to provide administrative, professional or technical services to each other.

1878 The schedule allows the Housing Ombudsman to conduct joint investigations with the New Homes Ombudsman as well as Local Commissioners as set out in the Housing Act 1996.

1879 Lastly, the schedule amends section 65 of the Public Services Ombudsman (Wales) Act 2019 to allow the Public Services Ombudsman for Wales to co-operate with and pass certain information to the New Homes Ombudsman. This includes a requirement for the Public Services Ombudsman for Wales to consult the New Homes Ombudsman when investigating a matter which that Ombudsman believes could be the subject of a New Homes Ombudsman investigation; a power for that Ombudsman to co-operate with the New Homes Ombudsman in those circumstances; and a power to conduct joint investigations and issue and publish joint reports about them with the New Homes Ombudsman.

1880 The amendment is also designed to allow information obtained by the Public Services Ombudsman for Wales in certain circumstances, such as during the conduct of an investigation or when deciding whether to investigate, to be disclosed for the purposes of co-operation with the New Homes Ombudsman under section 65.

Schedule 11: Construction products regulations

Paragraph 1

Effect

1881 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 - the construction product regulations.

Proposed use of power

1882 This will be achieved in three ways: (a) for construction products on the market to be subject to a general safety requirement, (b) for designated products (products which perform to a designated standard), and products subject to a technical assessment (c) to create a list of safety critical products (where the failure of such products would result in death or serious injury). This is set out in more detail in the paragraphs below.

Background

1883 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.

Paragraph 2 - General safety requirement

Effect

1884 This paragraph gives the Secretary of State the power to create regulations to ensure that construction products placed on the UK market are safe. The definition of safe is that a product under normal or reasonably foreseeable conditions of use does not present any risk to the health of safety of persons or, if it does, the risk is as low as it can be compatible with using the product. "Use" includes storage, transportation or packaging. Reasonably foreseeable conditions will include circumstances in which the product might come under stress, for example in a fire.

Proposed use of power

1885 The regulations will contain requirements dealing with the assessment of risk and taking steps to avoid that risk that can be imposed on persons carrying out activities in relation to construction products and their authorised representatives (as identified in regulations). The regulations will also contain market surveillance powers and powers to enforce where such products are not safe. The regulations will also allow for the regulation of the accuracy of claims about performance made in advertising and marketing material.

Background

1886 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 usually covered by consumer protection legislation.

Example 1

A manufacturer launches a new kind of brick tie onto the market. This product is not subject to a designated standard or to a technical assessment and has not been added to the safety critical list (but could be added). After a few months in use, when installed correctly, these brick ties begin to fail, bringing about the risk that walls incorporating these ties will collapse, injuring passers-by. The proposed regulations will require the manufacturer to ensure their products can be used safely by identifying the risks associated with the use of the product, and doing what can be done to mitigate this risk, including providing information about risks associated with using the product. If the product cannot be used safely, the product must be withdrawn from the market and, if possible, corrected before it is placed back on the market. The regulations will allow regulators to take action if the products are not removed from the market, and, potentially, bring a prosecution against relevant parties in the UK supply chain.

Example 2

If claims have been made through advertising, or in marketing material, about the performance of the ties which were misleading, then the regulations will allow regulators to take enforcement action against the relevant party, issue sanctions and potentially bring prosecutions. For example, if false statements are made about the mechanical performance of the new kind of brick tie which impacts its suitability for a particular intended use, the regulations would allow the relevant authorities to take action in relation to such a misleading performance claim, initially by requiring the misleading information to be corrected. This could go as far as requiring the product to be removed from the market until the misleading claims are rectified, with the potential for penalties up to, and including, fines or even imprisonment in certain circumstances.

Paragraphs 3 - 9 - Construction products with designated standards or technical assessments

Effect

1887 These paragraphs allow the Secretary of State to impose standards of product performance and other specific requirements to be met by persons carrying out activities in relation to construction products (for example, manufacturers, their appointed representatives, importers and distributors of construction products) where products are subject to a designated standard or conform to a technical assessment.

1888 These powers can be exercised UK wide, but allow for different provision for different parts of the UK. 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, or conform to a technical assessment. This power will not be used for

Northern Ireland, where construction products subject to an EU harmonised standard or conform to a European Technical Assessment will continue to be subject to EU Law. This provision will mean that reliable information is available to professionals, public authorities, and consumers on the performance of such construction products, that the performance of such products can be monitored, assessed and verified, and where appropriate products can be withdrawn from the market. These paragraphs also give the Secretary of State powers to impose requirements in relation to any statements or other claims made in advertising material in relation to the performance of products with designated standards or technical assessments.

Proposed use of this power

1889 This power can be used to replace the existing EU based regime, and design it to meet the demands of the UK market. The type of requirements which can be imposed include, amongst other things, the requirement for a declaration of performance; the provision of information, including information about risk; a requirement for the monitoring, assessment and verification of product performance; the taking of corrective action; recording and investigating complaints; notification of risks to relevant authorities and co-operation with relevant authorities.

1890 The power will allow the imposition of requirements in relation to any statements or other claims made in advertising or marketing materials about the performance of products. This will bring misleading construction product performance claims into the construction products regulatory regime. The regulations will contain details of any prohibition against making false statements about performance.

Background

1891 The current regulatory regime for construction products derives from EU law. This power will allow the Secretary of State to extend or amend that regime, or replace it.

1892 The Grenfell Tower Inquiry and internal and external investigations relating to construction product advertising have highlighted the severe consequences of misleading product performance claims. This power will also allow the Secretary of State to impose requirements in regulations on the making of claims or statements about the performance of construction products, including those made in advertising products, and for relevant authorities to investigate, enforce against and sanction non-compliance with such regulations.

Example 1

Products subject to a designated standard or a UK technical assessment are currently covered by existing EU harmonised standards, and in the future new designated standards and technical assessments can be added. This could happen where the EU creates new EU harmonised standards, and the Secretary of State chooses to designate them. The Secretary of State is also able to choose to designate other new standards, including UK and international standards. Going forward, there will now be 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.

Example 2

A product subject to a designated standard is placed on the UK market. Marketing material, or advertising about the performance of the product is misleading. For example, claims are made that the product will comply with certain building regulations, but in fact it doesn't. The Secretary of State will be able to take powers in regulations which would allow the relevant authorities to take action in relation to such a misleading performance claim, initially by requiring the misleading information to be corrected. This could go as far as requiring the product to be removed from the market until the misleading claims are rectified, with the potential for penalties up to, and including, fines or even imprisonment in certain circumstances.

Paragraphs 10 - 14 - Safety-critical products

Effect

1893 These paragraphs give the Secretary of State the power to create a list of safety critical construction products, regulate those products by reference to safety critical standards, create a market surveillance regime 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. Safety critical 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.

1894 The type of requirements which can be imposed include, amongst other things, the requirement for a declaration of performance; the provision of information, including information about risk; a requirement for the monitoring, assessment and verification of product performance; the taking of corrective action; recording and investigating complaints;, notification of risks to relevant authorities and co-operation with relevant authorities.

1895 These paragraphs also give the Secretary of State powers to impose requirements in relation to any statements or other claims made in advertising material in relation to the performance of products included in the list of safety critical construction products.

Proposed use of power

1896 To create the regulations as described above.

Background

1897 This is a new provision.

1898 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 conform to a EU Technical Assessment (now a designated standard and UK Technical Assessment) 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, allowing such products that do not meet their claimed performance to be withdrawn from the market.

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, against which the manufacturer must declare the product's performance, and to which standard the performance of products should consistently meet. This will mean any purchaser or user of this product will have reliable information about how it will perform, and the performance can be monitored and where necessary enforcement action taken.

Example 2

A product is added to the safety critical list. Marketing material or advertising about the performance of the product is misleading. For example, claims are made that the product is energy efficient to a certain standard, but in fact it isn't. The Secretary of State will be able to take powers in regulations which would allow the relevant authorities to take action in relation to such a misleading performance claim, initially by requiring the misleading information to be corrected. This could go as far as requiring the product to be removed from the market until the misleading claims are rectified, with the potential for penalties up to, and including, fines or even imprisonment in certain circumstances.

Paragraph 15 - Enforcement

Effect

1899 These powers will allow the Secretary of State to create market surveillance and enforcement powers relating to the regulation of products subject to a designated standard, products which conform to a technical assessment, products on the safety critical list, and the requirement for products to be safe.

Proposed use of power

1900 This power can be used by the Secretary of State to create an appropriate market surveillance and enforcement regime, to underpin the new regulatory regime created under the powers described above. These new powers can be exercised by relevant authorities (defined as the Secretary of State, or other Minister of the Crown, and a local authority, including Trading Standards). The intention is to, in effect, extend the existing powers under the Construction Products Regulations 2013 to the new regulatory regime, strengthening them to more closely align with the more extensive powers available for the enforcement of other product regulations through the Consumer Rights Act 2015, and extend the powers the Secretary of State has under the regime.

1901 The types of market surveillance and enforcement provisions which can be created include: monitoring and investigating compliance with construction product regulations. This can include a right to enter property and seize and retain products or evidence of non-compliance; a requirement for the provision of information; securing compliance with such regulations, and creating procedures for managing non-compliance, or suspected non-compliance. This can include, for example, a requirement to warn others of the risk, the marking of a product to indicate such risk, the suspension for a specified period, or prohibition, of the marketing and supply of such a product, and forfeiture. It also extends to accepting undertakings (with sanctions for failure to comply). There is also provision for creating an appeals process. The intention is for the market surveillance and enforcement provisions created under this power, to be used also by relevant authorities to monitor, investigate and enforce against misleading claims about the performance of construction products.

Background

1902 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 only. These regulations will allow us to create equivalent provisions for enforcement for products included on the safety critical list and those covered by the requirement to be safe. This means all construction products will be covered by an enforcement regime. The regulations can provide such powers can be exercised by relevant authorities (as defined).

Example

If, for example, it is a certain type of fire door produced by one manufacturer is found to be unsafe, it will not matter whether that particular type of fire door is subject to a designated standard, conforms to a technical assessment, or is on the safety critical list, the relevant authorities (as defined) will be given a full range of enforcement powers to ensure it is either made safe, or taken off the market.

If a claim is made in advertising or marketing material about the performance of fire doors, for example that they have a certain level of fire resistance, and that is not true, the relevant authorities will be given powers to, for example, require the advertising or marketing material is withdrawn, and/or that the product can no longer be supplied in the UK until the advertising or marketing material is corrected.

Paragraph 16 – Costs

Effect

1903 This paragraph gives the Secretary of State power to make provision for a relevant authority (as defined) to impose charges on a person carrying out activities in relation to construction products or an authorised representative of that person. Provision under this power includes for the resolution of disputes and appeals process, and may confer a discretion on the relevant authority.

Proposed use of power

1904 This power will be used by the Secretary of State to create a charging regime which will allow for the recovery of some of the costs attributable to the operation of the regulatory regime. The regulations will set out in detail when a charge can be applied and to whom, how the charge will be calculated and how decisions about charging can be appealed.

Background

1905 The Independent Review recommended that Government should ensure that there is a more effective enforcement, complaint investigation and market surveillance regime with national oversight to cover construction product safety. These powers enable the relevant authority (as defined), to recover some of the costs attributable to this new regime.

> **Example**
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> This charging authority could be used, for example, to charge for attendance at conferences, for publications or providing advice and support. It could also be used, for example, if local Trading Standards discovers through the exercise of its market surveillance and enforcement functions that a construction product was found to be non-compliant with these regulations. It could seek to recover the costs of the relevant regulatory functions exercised in establishing and dealing with this non-compliance.

Paragraphs 17 – 19 – Information

Effect

1906 This paragraph gives the Secretary of State power to provide in regulations for the provision of information by relevant authorities with other relevant authorities, or with persons specified, or identified in regulations. This may include circumstances in which information may, or must be, provided and includes a range of provision for how such provision of information can, or must be, managed. There is provision for the publication of information by relevant authorities. There is also provision for the creation of criminal offences.

Proposed use of power

1907 To create a regime for the effective provision of information to support the efficient regulation of construction products in the UK.

Background

1908 There are a number of bodies in the UK, including those with regulatory or enforcement functions, which may, in the exercise of their functions, obtain information about construction products which are, or may be, unsafe. This regime will create an information Gateway which will allow for this information to be shared lawfully with the appropriate relevant authority (and between such authorities where necessary) and which can then be used in the exercise of their regulatory functions. The regime will allow for the publication of information, which could assist anybody considering using such products. This regime is intended to support the effective exercise of the regulation of construction products in the UK.

Example

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 20 - 22 - General and supplementary

1909 Paragraph 20 provides that different provisions may be made for different purposes and for different parts of the United Kingdom. This is necessary in Northern Ireland for implementation of the effect of the Northern Ireland Protocol.

1910 Paragraph 20(1)(c) provides for transitional, transitory, consequential or supplementary provisions or savings.

1911 Paragraph 21 gives a power to repeal, amend or re-enact retained EU law, the 2019 and 2020 regulations, and any enactment, other than an Act.

1912 Paragraph 22 sets out details of the offences which can be created in construction product regulations, any relevant procedures applicable, and the type and range of sentences which can be imposed.

Paragraph 23 - Procedure

1913 This paragraph provides that regulations under this Act are to be made by statutory instrument. Regulations that create the list of safety critical products or remove any products from the list, or which create any criminal offences are subject to the affirmative procedure. Otherwise, they are subject to the negative procedure. Where regulations include provisions which are separately subject to the affirmative and negative procedure, then such regulations will be subject to the affirmative procedure. This paragraph also enables a statutory instrument to contain both construction products regulations and regulations relating to costs contribution orders, provided that it is made using the draft affirmative procedure.

Paragraph 24 – Interpretation

1914 This paragraph explains what is meant by the key terms in this schedule.

Commencement

1915 The provisions of this Act come into force on such day as the Secretary of State may by regulations appoint, subject as follows.

1916 The following provisions of this Act come into force on the day on which Royal Assent is received:

- Section 1;
- Section 2(1);
- Section 7;
- Section 28;
- Section 30;
- Sections 61 to 70;
- Section 115 and
- Part 6, except sections 161 and 164
- The regulation making powers in Parts 2 and 4 of the Act also come into force on Royal Assent.

1917 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:

- Sections 116 to 125 and Schedule 8;
- Section 134;
- Section 135;
- Section 146 (and schedule 11);
- Sections 147 to 155;
- Section 157 to 159.

1918 The following Wales-only provisions of this Act come into force on such day as the Welsh Ministers may by regulations appoint-

- Section 31 (but only as respects section 120I of the Building Act 1984)
- Section 32(3) (but only as respects section 91ZD of the Building Act 1984)
- Section 42 (but only as respects section 58Z2 and 58Z10 of the Building Act 1984)

- Schedule 5, paragraph 56 and paragraph 77 (but only as respects section 120C of the Building Act 1984)

1919 The following provisions of this Act come into force, in relation to Wales, on such day as the Welsh Ministers may by regulations appoint-

- Section 32 except subsection (3) of that section;
- Section 33 except so far as relating to paragraph 1D(3) of Schedule 1 to the Building Act 1984;
- Sections 34 to 41;
- Section 42 except so far as relating to section 58Z2, 58Z7 or 35 58Z10 of the Building Act 1984;
- Section 43 and Schedule 4;
- Sections 44 to 52;
- Section 53 except subsection (1) of that section;
- Section 55 and Schedule 5 except—

  (A) paragraphs 38 and 87 to 89 of that Schedule (and section 54 so far as relating to those paragraphs);

  (B) paragraph 77 of that Schedule so far as relating to section 120B of the Building Act 1984 (and section 54 so far as relating to that section);
- Section 56 and Schedule 6 except paragraphs 7 and 29 of that Schedule;
- Section 57;
- Section 156 except subsection (8) of that section so far as relating to Article 22B of the Regulatory Reform (Fire Safety) Order 2005;

Financial implications of the Act

1920 Financial implications of the Act include, but are not limited to:

- The establishment and running of the national Building Safety Regulator within the Health and Safety Executive. The Government is already making available funding for Health and Safety Executive to deliver certain "shadow" Building Safety Regulator functions within the Secretary of State's existing powers, with up to £16.4m made available in 2020/21 and increased funding in 2021/22. The Impact Assessment includes estimates for the future costs of the Building Safety Regulator;

- Dame Judith Hackitt's Independent Review recommended that the regulator for buildings in scope of the more stringent regulatory model should operate a full cost-recovery model. The Government intends to implement the recommendation of the Independent Review around cost-recovery to the extent permitted under Managing Public Money principles. The Act therefore makes provision for Building Safety Regulator to be able to charge substantial fees. Details of preliminary work undertaken to estimate achievable cost-recovery rates across each Building Safety Regulator function are set out in the Impact Assessment;

- The costs of delivery of the more stringent regulatory regime include costs for fire and rescue authorities and local authorities, given the powers in the Act for these authorities to support the work of the regulator on higher-risk buildings through a "multi-disciplinary team" approach. The Act makes provision for these local authority and fire and rescue authority costs to be met through reimbursement by the Building Safety Regulator (with Building Safety Regulator fees expected to cover the costs of the team delivering regulator's functions), or grants by the Secretary of State. Grants may also be appropriate to build capability;

- The establishment and running of the National Regulator for Construction Products, covering the whole of the UK, within the Office of Products Safety and Standards (OPSS). The Government is already making available funding for OPSS to set up its construction products functions, including operating within the Secretary of State's existing powers, and has allocated up to £10.3m in 2021/22. The Impact Assessment includes estimates for the future costs of the National Regulator for Construction Products;

- The Act also enables the Secretary of State to make provision to apply charges on manufacturers, importers and distributors in relation to regulatory and enforcement activity undertaken by the relevant authority for the regulation of construction products, where applicable. This will enable local Trading Standards and the national regulator to recover some of the costs of their associated regulatory activity, in line with regulatory good practice and to the extent permitted under Managing Public Money principles. Details of this are subject to further work between OPSS and DLUHC;

- There may be costs associated with the establishment and maintenance of the New Homes Ombudsman Scheme and enforcement framework. The Secretary of State must make arrangements for a scheme. Those arrangements may include the selection of a third party to establish the scheme and maintain it, establishing and maintaining the scheme directly or establishing the scheme and appointing

another person to maintain the scheme. The New Homes Ombudsman will be funded by fees payable by its members. The Impact Assessment includes estimates for the future costs of the New Homes Ombudsman; and

- There may also be costs associated with the additional activities for Local Housing Authorities as dutyholders for their housing stock, insofar as it falls within scope of the Act, and for the additional activities within the justice system, to support enforcement.

Related documents

1921 The following documents are relevant to the Act and can be read at the stated locations:

Independent Reports

- Building a Safer Future - Independent Review of Building Regulations and Fire Safety: Final Report, May 2018. - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707785/Building_a_Safer_Future_-_web.pdf
- Grenfell tower inquiry: Phase 1 report - https://www.grenfelltowerinquiry.org.uk/phase-1-report

Consultations and Consultation Responses

- Building a Safer Future: Proposals for Reform of the Building Safety Regulatory System, June 2019. - https://www.gov.uk/government/consultations/building-a-safer-future-proposals-for-reform-of-the-building-safety-regulatory-system
- The Regulatory Reform (Fire Safety) Order 2005: call for evidence, June 2019. - https://www.gov.uk/government/consultations/the-regulatory-reform-fire-safety-order-2005-call-for-evidence
- Fire Safety – Government consultation, July 2020 - https://www.gov.uk/government/consultations/fire-safety

Relevant legislation

- Architects Act 1997 - https://www.legislation.gov.uk/ukpga/1997/22;
- Building Act 1984 - http://www.legislation.gov.uk/ukpga/1984/55;
- The Building Regulations 2010 - http://www.legislation.gov.uk/uksi/2010/2214;
- The Building (Approved Inspectors etc.) Regulations 2010 - https://www.legislation.gov.uk/uksi/2010/2215;

- The Building (Local Authority Charges) Regulations 2010 - https://www.legislation.gov.uk/uksi/2010/404;
- Commonhold and Leasehold Reform Act 2002 - https://www.legislation.gov.uk/ukpga/2002/15;
- Construction (Design and Management) Regulations 2015 - http://www.legislation.gov.uk/uksi/2015/51;
- The Construction Products Regulations 2013 - http://www.legislation.gov.uk/uksi/2013/1387;
- The Construction Products (Amendment etc) (EU Exit) Regulations 2019 - http://www.legislation.gov.uk/uksi/2019/465;
- The Construction Products (Amendment etc) (EU Exit) Regulations 2020 - https://www.legislation.gov.uk/uksi/2020/1359/made;
- Defective Premises Act 1972 - https://www.legislation.gov.uk/ukpga/1972/35;
- Fire Safety Act 2021 - https://www.legislation.gov.uk/ukpga/2021/24;
- Health and Safety at Work etc. Act 1974 - http://www.legislation.gov.uk/ukpga/1974/37;
- Housing Act 1996 - http://www.legislation.gov.uk/ukpga/1996/52;
- Landlord and Tenant Act 1985 - http://www.legislation.gov.uk/ukpga/1985/70;
- Landlord and Tenant Act 1987 - https://www.legislation.gov.uk/ukpga/1987/31;
- Limitation Act 1980 - https://www.legislation.gov.uk/ukpga/1980/58;
- Regulation (EU) No 305/2011 - https://www.legislation.gov.uk/eur/2011/305;
- The Regulatory Reform (Fire Safety) Order 2005 - https://www.legislation.gov.uk/uksi/2005/1541;

Annex A - Territorial extent and application in the United Kingdom

Provision[8]	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?
PART 1 - INTRODUCTION				
Section 1	Yes	In part	In part	In part
PART 2 – THE REGULATOR AND ITS FUNCTIONS				
Section 2	Yes	In part	In part	No
Sections 3-21	Yes	No	No	No
Sections 22-23	Yes	No	No	No
Sections 24-30	Yes	No	No	No
PART 3 – BUILDING ACT 1984				
Sections 31-32	In part	In part	No	No
Section 33	In part	In part	No	No
Sections 34-36	Yes	Yes	No	No
Section 37	In part	In part	No	No
Sections 38-40	Yes	Yes	No	No
Section 41	Yes	In part	No	No
Sections 42-52	Yes	Yes	No	No
Section 53	Yes	No	No	No

[8] For the purposes of Annex A only, provisions that have minor or consequential effects in devolved territories are not listed as "applying" to those territories. This means that the "application" analysis here in Annex A differs slightly to the analysis in the main body of the explanatory notes, where a provision which has minor or consequential effects in a territory outside of England is said to "apply" to that territory as it produces practical effects there.

Provision[8]	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?
Section 54	Yes	No	No	No
Sections 55-57	Yes	Yes	No	No
Section 58	Yes	No	No	No
Section 59-60	Yes	Yes	No	No
PART 4 – HIGHER RISK BUILDINGS				
Sections 61-68	Yes	No	No	No
Sections 69-73	Yes	No	No	No
Sections 74-80	Yes	No	No	No
Sections 81-85	Yes	No	No	No
Sections 86-89	Yes	No	No	No
Section 90	Yes	No	No	No
Sections 91-93	Yes	No	No	No
Sections 94-97	Yes	No	No	No
Section 98	Yes	No	No	No
Sections 99-100	Yes	No	No	No
Sections 101-104	Yes	No	No	No
Sections 105	Yes	No	No	No
Sections 106-110	Yes	No	No	No
Sections 111-113	Yes	No	No	No
Sections 114-115	Yes	No	No	No

Provision[8]	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?
PART 5 – OTHER PROVISIONS ABOUT SAFETY, STANDARDS ETC.				
Sections 116-117	Yes	No	No	No
Section 118	Yes	No	No	No
Section 119	Yes	No	No	No
Section 120	Yes	No	No	No
Sections 121-127	Yes	No	No	No
Section 128	Yes	No	No	No
Section 129	Yes	No	No	No
Section 130	Yes	Yes	No	No
Sections 131-132	Yes	Yes	No	No
Section 133	Yes	Yes	No	No
Section 134	Yes	Yes	No	No
Section 135	Yes	Yes	No	No
Section 136	Yes	Yes	Yes	Yes
Section 137	Yes	Yes	Yes	Yes
Section 138	Yes	Yes	Yes	Yes
Section 139	Yes	Yes	Yes	Yes
Section 140	Yes	Yes	Yes	Yes
Section 141	Yes	Yes	Yes	Yes
Section 142	Yes	Yes	Yes	Yes
Section 143	No	Yes	No	No
Sections 144-145	Yes	No	No	No
Sections 146-149	Yes	Yes	Yes	No
Section 150	Yes	Yes	No	No
Section 151	No	No	Yes	No
Sections 152-155	Yes	Yes	Yes	Yes
Section 156	Yes	Yes	No	No
Sections 157-159	Yes	Yes	Yes	Yes
Section 160	Yes	No	No	No
PART 6 - GENERAL				

Provision[8]	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?
Section 161	Yes	No	No	No
Sections 162-163	Yes	Yes	Yes	Yes
Sections 164-165	Yes	No	No	No
Section 166	Yes	Yes	Yes	Yes
Section 167	No	Yes	No	No
Sections 168-171	Yes	Yes	Yes	Yes
Schedule 1: Amendments of the Health and Safety at Work etc Act 1974	Yes	In part	In part	No
Schedule 2: Authorised officers: investigatory powers	Yes	No	No	No
Schedule 3: Co-operation and information sharing	Yes	No	No	No
Schedule 4: Transfer of approved inspectors' functions to registered building controllers	Yes	Yes	No	No
Schedule 5: Minor and consequential amendments in connection with Part 3	In part	In part	No	No
Schedule 6: Appeals and other determinations	In part	In part	No	No
Schedule 7: Special Measures	Yes	No	No	No
Schedule 8: Remediation costs under qualifying leases	Yes	No	No	No
Schedule 9: The new homes ombudsmen scheme	Yes	Yes	Yes	Yes
Schedule 10: Amendments in connection with the new homes ombudsman scheme	In part	In part	No	No
Schedule 11: Construction products regulations	Yes	Yes	Yes	Yes

Annex B - Hansard References

1923 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Commons		
Introduction		Bill as introduced
Second Reading	21 July 2021	Vol. 699 col. 1016
Public Bill Committee	9 September 2021	Col. 1 Col. 27
	14 September 2021	Col. 77 Col. 107
	16 September 2021	Col. 151 Col. 167
	21 September 2021	Col. 213 Col. 241
	23 September 2021	Col. 269 Col. 291
	19 October 2021	Col. 323 Col. 357
	21 October 2021	Col. 387 Col. 411
	26 October 2021	Col. 439 Col. 475
Report	19 January 2022	Vol. 707 col. 360
Third Reading	19 January 2022	Vol. 707 col. 449
House of Lords		
Introduction	20 January 2022	Bill as introduced Vol. 817
Second Reading	2 February 2022	Vol. 818 col. 916
Grand Committee	21 February 2022	Vol. 819 col. 1GC
	24 February 2022	Vol. 819 col. 123GC
	28 February 2022	Vol. 819 col. 198GC
	2 March 2022	Vol. 819 col. 287GC

Report	29 March 2022	Vol. 820 col. 1389 Vol. 820 col. 1456
Third Reading	4 April 2022	Vol. 820 col. 1843
Consideration of Lords Amendments	20 April 2022	Vol. 712 col. 181
Consideration of Commons Amendments	26 April 2022	Vol 821 col. 201
Royal Assent	28 April 2022	Vol. 821 col. 383

Annex C - Glossary

Term	Notes
Accountable Person	The dutyholder during a building's occupation. If an occupied higher-risk residential building has just one Accountable Person, they will automatically become the Principal Accountable Person for that building Where there are two or more Accountable Persons for a building, provisions are in place to determine that one of them will be assigned as the Principal Accountable Person with overall responsibility for meeting specific statutory obligations for the whole building.
Approved Documents	Guidance detailing ways to meet building regulations. These contain guidance on the standard 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. Under this Act they are 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 Assessment 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 meeting the relevant 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 activities	Activities, such as site inspections, carried out by building control bodies to check that the requirements of the building regulations are met in relation to building work. The Act creates a power to prescribe activities so that building control bodies have to use a registered building inspector to carry them out.
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 1984 matters or checking compliance with Building Regulations requirements.
Building control body	A general term for organisations that check that the requirements of the building regulations are met in relation to building work. In the current system these are local authorities and Approved Inspectors. In the reformed system it will be local authorities, the Building Safety Regulator, and registered building control approvers.
Building control functions	Functions exercised by building control bodies at decision points in the building control process. Examples include the issuing of final or completion certificates. The Act creates a power to prescribe functions so that building control bodies have to obtain and consider the advice of a registered building inspector before carrying them out.
Building regulations	Technical and procedural requirements which persons undertaking building work must meet.

Term	Notes
Building Regulations Advisory Committee (BRAC)	Advisory committee established under (current) 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 Costs	The Building Safety Costs are an identifiable part of the service charge and are narrowly defined in the Bill as costs incurred in connection with "relevant building safety measures". Leaseholders with leases longer than seven years, regardless of whether they are an owner-occupier or renting to a tenant, in a high-rise multi-occupied building of at least 18m or at least seven storeys are liable to pay these costs. The Accountable Person will be required to provide leaseholders with information about the building safety costs, together with a summary of the leaseholders' rights and obligations. The Act sets out limitations on what can be charged.
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 spread of fire, structural failure or any other matter prescribed in regulation.
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 higher-risk 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.
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, fire and rescue authorities are independent local public bodies under the Fire and Rescue Services Act and also the enforcing authorities under the Regulatory Reform (Fire Safety) Order 2005. Different governance models apply: standalone (or combined) fire and rescue authorities, County Council or Unitary Authorities; mayoral authorities (London and Manchester); and, Police, Fire and Crime Commissioners. In Wales, a fire and rescue authority is a county council or a county borough council.
Fire and Rescue Service(s) (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. FRSs are overseen by FRAs and cover the identical geographical area to the FRA.

Term	Notes
Fire risk assessment	The fire risk assessment is the process by which the Responsible Person must make a suitable and sufficient assessment of the presence of fire risks to relevant persons who are on or in the vicinity of premises regulated by the Regulatory Reform (Fire Safety) Order 2005, and must identify the general fire precautions needed to prevent or mitigate these risks in order to protect the safety of the relevant persons and comply with the legislation.
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 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 (Property Chamber) can be appealed to the Upper Tribunal (Lands Chamber).
Gateway one, two and three	Three key stages in the building development for higher-risk buildings, where the dutyholder must comply with requirements before they can continue to the next stage of development.
Golden thread	Information required through other processes (such as Gateways two and three and the safety case) to support building safety held digitally to specific principles. These principles 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 Act.
The Housing Ombudsman	The Housing Ombudsman provides redress for social housing residents. The Ombudsman's scheme was 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 duties	The Mandatory Occurrence Reporting duties will require dutyholders across all stages of the existence of a higher-risk building 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 higher-risk buildings. 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 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.

Term	Notes
Principal Accountable Person	See above for the definition of an Accountable Person. The Principal Accountable Person will have same statutory obligations for assessing and managing building safety risks in their own area of the building as other Accountable Persons but will also have overall responsibility for meeting specific statutory obligations for the whole building.
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 which 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. 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 residential unit is a person who 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 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 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 if the workplace is to any extent under his control; or • in premises which are not a workplace, the person who has control of the premises (as occupier or otherwise) in connection with carrying on of a trade, business or other undertaking (whether for profit or not); or • the owner where the person in control of the premises does not have control in connection with the carrying out by that person of a trade, business or other undertaking.
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.

Term	Notes
Special Measures Manager	A court appointed manager who has been put in place by the Building Safety Regulator in circumstances where there has been a single serious or 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, taking over the Accountable Person's functions under Part 4.

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