Building Safety Bill

Memorandum concerning the Delegated Powers in the Bill for the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Building Safety Bill ("the Bill"). The Bill was introduced on 5 July 2021. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.[1]

2. The Bill was published in draft form for pre-legislative scrutiny in July 2020, since then it has been reviewed in depth to ensure that wherever possible the use of delegated powers has been minimised unless there is strong justification. For example:

- As recommended by the pre-legislative scrutiny process, we have defined 'higher-risk buildings' on the face of the Bill. An amendment of the definition, for example in response to emerging evidence of risk, would be subject to affirmative resolution procedures in both Houses of Parliament.
- In Part 4, we have put much more detail on the face of the Bill, and removed several delegated powers.
- We have reduced the use of Henry VIII powers. For example, the power contained in the construction products element of the Bill (Schedule 11) has now been removed.

3. This is a large and complex Bill legislating for a reformed building safety regulatory system and two new regulators. For comparison, Acts such as the Housing and Regeneration Act 2008, which created a new regulatory regime and legislated for new delivery and regulatory bodies, in this case the Homes and Communities Agency and the Social Housing Regulator, contained a high number of delegated powers.

4. The pre-legislative scrutiny process was an opportunity for Parliament to give its views, including on whether we have struck the correct balance with regard to delegated powers. In November 2020, the Housing, Communities and Local Government Committee published their report on *Pre-legislative scrutiny of the Building Safety Bill.*

5. We carefully considered each of the committee's recommendations in turn and have made substantial changes to the legislation, and to our operational plans, since the publication of the draft Bill. We recognise the general concerns that the committee raised in relation to the use of delegated powers in the Bill and have

[1] For a definition of terms used in this document refer to the glossary of terms in Annex B to the Explanatory Notes for the draft Building Safety Bill.

been working throughout the past six months to ensure that we are able to deliver clarity for stakeholders and Parliamentarians through the publication of documents related to secondary legislation and implementation alongside the Bill.

6. It is also worth recognising that the [then] HCLG Committee noted in their pre-legislative scrutiny report that the use of secondary legislation is “unsurprising, as the existing regime for building control relies so heavily on secondary legislation”. We consider it would not be appropriate for new amendments to the building control regime not to rely on secondary legislation as it is being inserted into the existing regime of the Building Act 1984.

7. A key reason for seeking to use delegated powers (beyond aligning with the existing statutory regimes we are amending) is that we judge it essential to be able to respond in a timely way to an evolving evidence base on building safety issues, and in particular emerging and potentially urgent risks – specifically that the Secretary of State will be able to respond more rapidly to changing circumstances through secondary legislation, than if required to amend primary legislation. The Independent Review of Building Regulations and Fire Safety said, in relation to defining which buildings are in scope:

   “it will also be important to ensure that government can respond quickly in the future, where necessary, to broaden this definition in light of either critical new information emerging (e.g. through incident reporting or whistle-blowing) or experience of operating the new regime.”

8. The delegated powers we have sought will enable the Secretary of State to make regulations to support the Building Safety Regulator in delivering the assurance regime based on evidence of risk, while providing clarity to the sector on its responsibilities and duties; and the National Regulator of Construction Products in responding to changes in construction and building technology.

9. Our (and the Building Safety Regulator’s) understanding of building safety risks will continue to evolve and improve over time. We need to ensure flexibility across the new regulatory regime as this understanding develops and as the processes, structure and culture of the built environment industry continue to evolve.

10. It is also common and usual for administrative and procedural details of a regulatory regime to be set out in secondary legislation. A significant number of delegated powers in the Bill relate to procedural and administrative detail of the new regulatory regime, such as the content of forms, time periods and processes for applications.

11. Alongside introduction of the Bill and during its passage, we have published draft regulations that provide Parliament clear and specific examples of our intentions for the secondary legislation. This is crucial information that we understand residents, industry and Parliament will want to have clarity on as soon as possible. The package includes draft regulations that:

- provide further detail on the scope of the new regime. The definition of "higher-risk buildings" is set out separately in Part 3 and Part 4 of the Bill. The draft regulations explain terms used in both Parts (storey and methodology for measuring height). They further define "higher-risk buildings" for Part 3 by setting out which building uses are specified: buildings with two or more residential units, care homes and hospitals. They further define which buildings are exempted from Parts 3 and 4 such as hotels and prisons;
- set out the framework of dutyholders and their duties for those persons and organisations who commission, design and undertake building work to which building regulations apply. The indicative regulations set out duties requiring dutyholders to cooperate and communicate with other dutyholders, coordinate their work and have systems in place to ensure that building work, including design work, complies with all relevant building regulations;
- set out duties on anyone carrying out design and building work and those who appoint them to ensure that they have the relevant skills, knowledge, experience and behaviours to perform their roles in a way that ensures compliance with building regulations, and specific duties on Clients to ensure that the Principal Designers and Principal Contractors they appoint or certify have the relevant skills, knowledge, experience and behaviour to fulfil their duties under building regulations;
- set out how the construction products regulatory regime is intended to work. We understand it will be important for the parties who will be affected (including manufacturers, importers, distributors and end users) to be able to start preparations for the introduction of the new regime; and
- set out the building control applications process and requirements for "higher-risk buildings" (gateway points) to ensure that building safety risks are given appropriate consideration during a building's design and construction. The indicative regulations for Gateway two and Gateway three set out the process for applications and the prescribed plans and documents that must be provided at each stage, including full applications and staged applications at Gateway two. The indicative regulations also set out information handover requirements at Gateway three, as well as the prescribed timescales for the Building Safety Regulator to determine Gateway two and three applications.[2]

12. We have also published a number of factsheets that explain key areas of the Bill and set out our intentions for developing further secondary legislation. This will include further detail on our proposals for residents' role in the new regime and best practice approaches to the assessment and management of risk. The Draft Regulations and factsheets can be found here https://www.gov.uk/government/collections/building-safety-bill#building-safety-bill-documents

[2] We also introduced a number of new requirements (which we refer to as Planning gateway one) in the planning system by making amendments to The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). This will ensure fire safety matters as they relate to land use planning are incorporated at the planning stage for schemes involving a high-rise residential building. This description is provided here for information purposes only; this Bill contains no provisions in relation to this stage. The changes came into effect on 1 August 2021.

13. We have been consistent that we want to work with residents, industry, and Parliament to ensure the new regulations are fit for purpose. In publishing further detail on the secondary legislation during passage of the Bill, we aim to ensure that Parliament has sufficient opportunity to scrutinise our proposals. Most of the regulations to implement the new regime are also subject to a statutory consultation requirement, which will provide a further opportunity for the sector to scrutinise the proposals.

14. Where the delegation of a power to the Secretary of State is considered more controversial or amends primary legislation, regulations made under the power will be subject to affirmative resolution procedures in both Houses of Parliament. This will ensure that both Houses have the ability to scrutinise, debate and approve these regulations.

15. We agree that powers to amend primary legislation should be included only where justified and necessary. As such and having regard to the need for the new regulatory regime to interact with a number of other existing statutory regimes, we have only taken powers to amend primary legislation in a limited number of places. We have reviewed and reduced the use of such powers following pre-legislative scrutiny of the draft Bill. The power under paragraph 16(1)(c) of Schedule 8 of the draft Bill, for example, would have allowed the Secretary of State to amend primary legislation via construction products regulations. We have decided that this specific power is unnecessary, and we have removed it from the version of the Bill which is introduced.

16. Finally, a further reason the number of entries in this memorandum is high is due to the number of proposed changes we are making to the existing powers in the Building Act 1984 to make building regulations in order to deliver the reforms. For example, clauses 32, 33 and 34 insert 12 new paragraphs into Schedule 1 of the Act to replace and amend existing provision. We have set out the justification for these provisions as twelve separate entries whereas legally they are amendments to one delegated power (as section 1(3) of the Building Act 1984 explains the provisions of Schedule 1 set out the matters which may be included in building regulations they are not separate new powers).

B. SUMMARY OF THE BILL

17. In the wake of the Grenfell tragedy, Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety, published in May 2018, found that the regulatory system for high-rise and complex buildings was not fit for purpose. Overall, 53 recommendations were made for government and industry to drive the cultural change and right behaviours necessary to improve building safety. Government has committed to implementing these recommendations.

18. The Government accepted all the Review's recommendations and published its *Building a Safer Future consultation* in June 2019. Nearly 900 responses were received from individuals, residents' groups and representatives from the fire safety and built environment industry. The Government published its response to the consultation in April 2020.

19. We are introducing a package of legislative changes to ensure that the issues identified with the current building and fire safety regime are rectified. This includes the measures in the Building Safety Bill, the Fire Safety Act 2021, and changes to the Fire Safety Order.

20. The Building Safety Bill is a significant and comprehensive piece of legislation which, together with housing, construction product and fire safety legislation will deliver a stronger regulatory system, to ensure that the nation's homes are, and feel, safer in future. Provisions in the Bill include:

- a new Building Safety Regulator, which will be established within the Health and Safety Executive. The Building Safety Regulator will oversee the safety and standards of all buildings, implement the new, more stringent regulatory regime for higher-risk buildings, and assist and encourage competence among the built environment industry and registered building inspectors;
- a new, more stringent regulatory regime for higher-risk buildings. It is our intention that, from the outset of the new regime, the scope of a 'higher-risk building' for the purposes of the Building Act 1984, as amended by Part 3 of the Bill (design and construction requirements), will apply to all multi-occupied residential buildings, care homes, and hospitals with in-patients, of at least 18 metres in height, or at least seven storeys (whichever is reached first). For Part 4 of the Bill (occupation requirements), the scope of a 'higher-risk building' will apply to all multi-occupied residential buildings (but not care homes and hospitals) of at least 18 metres in height or at least seven storeys (whichever is reached first);
- clearer accountability for, and stronger duties on, those responsible for the safety of higher-risk buildings throughout design, construction and occupation, and stronger enforcement and sanctions to deter non-compliance;
- new requirements for the provision of information to residents, opportunities for them to participate in the decision-making about their homes, and a stronger framework for escalating safety concerns, alongside new obligations on residents to contribute to the effective management of the safety of their building;
- a new professional structure for building control covering both local authority teams and Approved Inspectors (who will be renamed as registered building control approvers); and
- a stronger and clearer framework for the regulation of construction products, including claims about performance made in advertising or marketing material, placed on the UK market, paving the way for a new national regulator for construction products with national oversight and robust enforcement capability.

21. To support the stronger and more effective framework for resolving disputes between new build homebuyers and developers, the Bill also includes provisions for a New Homes Ombudsman. The Bill also removes the 'democratic filter' requirement placed on residents and other individuals wishing to escalate complaints to the Housing Ombudsman.

22. To deliver the more stringent regulatory regime for higher-risk buildings, the Bill includes a range of detailed measures to make provision for:

- creating dutyholder roles for those managing risks across the lifecycle of higher-risk buildings;
- a system of Gateway points to ensure that building safety risks are given appropriate consideration during a building's design and construction;
- a new system of building registration and certification to ensure the Building Safety Regulator is notified about higher-risk buildings and to assess the building's safety;
- a safety case regime to ensure that a building's safety risks are managed throughout its occupation;
- an obligation on the Accountable Person[3] to produce a Residents' Engagement Strategy which describes the information that will be provided to residents on decisions about the management of their building, which of those decisions they will be consulted on, arrangements for obtaining and taking account of their views and how the Accountable Person's methods for promoting participation will be measured and kept under review;
- a new route for residents to escalate safety concerns about the building safety risks relating to their building;
- duties on residents and owners not to act in a way that increases building safety risks, not to interfere with relevant safety items, and to comply with a request from an Accountable Person for information required for the purposes of their duty to carry out building safety risk assessments or take reasonable steps to prevent serious harm;
- a golden thread of building information which the relevant dutyholder must maintain throughout the lifecycle of the building in accordance with prescribed standards and must pass to subsequent dutyholders and successors in title; and
- additional obligations on landlords to find alternative financing for remediation works in order to lower leaseholder costs.

23. The Bill will also amend provisions in the Regulatory Reform (Fire Safety) Order 2005 to support greater compliance with and effective enforcement of fire safety legislation for all non-domestic premises. These include:

- a requirement for all Responsible Persons (RP) under the Order to record their fire risk assessments;
- a requirement that the RP must not appoint a person to assist them to make or review the assessment unless they are competent;
- a requirement that the RP must provide residents in buildings consisting of two or more sets of domestic premises with specific fire safety information;
- a requirement that outgoing RPs must provide incoming RPs for the same premises or parts of premises with relevant fire safety information;

[3] Property ownership can be complex and there maybe more than one Accountable Person in a building. In these instances, there will be a 'lead' Accountable Person known as the Principal Accountable Person. References to the duties of an 'Accountable Person' in this document 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.

- a requirement for RPs to identify and co-operate with Accountable Persons in the same premises where both regimes apply;
- an increase in the level of fines available for three existing criminal offences under the Order; and
- amendment to the guidance provision for RPs to expressly provide that compliance or non-compliance with the guidance may be relied upon by the Court as supporting compliance with or breach of the Order.

24. The delegated powers in the Bill are:[4]

Part 2: THE REGULATOR AND ITS FUNCTIONS

- Clause 3(5)(b): definition of 'building function'
- Clause 12(1): Committees: power to amend or repeal
- Clause 13(2): Local authorities and fire and rescue authorities: provision of assistance etc to regulator
- Clause 15(4) and (6): Provision of assistance etc: supplementary
- Clause 16(1): Guidance about the provision of assistance
- Clause 19(2): Annual report about information provided under mandatory reporting requirements
- Clause 24(1), (2), (3) and (7): Review by regulator of certain decisions made by it
- Clause 26: Cooperation and information sharing
  Schedule 3: Cooperation and information sharing:
  a. Paragraph 2(2)(c), 2(5)(b), and 2(5)(c): "Local authorities, fire and rescue authorities etc"
  b. Paragraph 6(1) and (2): "Public Authorities"
- Clause 27(1): Fees and charges
- Clause 29(1) and (3): definition of 'building' in Part 2

Part 3: BUILDING ACT 1984

- Clause 30: Higher-risk buildings etc –
  a. New section 120D(2), (3), (4), (5) and (6) of the Building Act 1984: "Meaning of "higher-risk building": England"
  b. New section 120I(2) and (4) of the Building Act 1984: "Higher-risk buildings and higher-risk building work: Wales"
- Clause 31: Building control authorities –
  a. New section 91ZB(1) of the Building Act 1984: "The regulator: building control authority for other work"
  b. New section 91ZC(2), (3) and (6) of the Building Act 1984: "Section 91ZB: supplementary"
  c. New section 91ZD(1) to (4) of the Building Act 1984: "Higher-risk building work in Wales: local authority work"

[4] For the purposes of this list, some clauses have been recorded more than once, to take account that the particular clause has delegated powers with different procedures.

- Clause 32[5]: Building regulations –
    a. New paragraph 1A of Schedule 1 to the Building Act 1984: “Procedural requirements etc: general”
    b. New paragraph 1B of Schedule 1 to the Building Act 1984: “Applications for building control approval”
    c. New paragraph 1C of Schedule 1 to the Building Act 1984: “Certificates: approved schemes”
    d. New paragraph 1D of Schedule 1 to the Building Act 1984: “Obtaining, keeping and giving information and documents”
    e. New paragraph 1E of Schedule 1 to the Building Act 1984: “Reporting requirements: duty to establish and operate system”
    f. New paragraph 1F of Schedule 1 to the Building Act 1984: “Form and content of documents etc”
    g. New paragraph 1G of Schedule 1 to the Building Act 1984: “Inspection, testing etc”
    h. New paragraph 1H of Schedule 1 to the Building Act 1984: “Applications to building control authorities: extension of period by agreement”
    i. New paragraph 1I of Schedule 1 to the Building Act 1984: “Appeals”
- Clause 33: Dutyholders and general duties –
    a. New paragraph 5A of Schedule 1 to the Building Act 1984: “Appointed persons”
    b. New paragraph 5B of Schedule 1 to the Building Act 1984: “General duties”
- Clause 34: Industry competence – New paragraph 5C of Schedule 1 to the Building Act 1984: “Competence requirements"
- Clause 35: Lapse of building control approval etc –
    a. New section 32(6) of the Building Act 1984: "Lapse of building control approval”
    b. New section 53A(6) of the Building Act 1984:” Lapse of initial notice”
    c. New paragraph 4A(6) to Schedule 4 to the Building Act 1984: “Lapse of public body’s notice”
- Clause 36: Determination of certain applications by Secretary of State or Welsh Ministers – new section 30A(1), (3), (5), (6), and (9) of the Building Act 1984
- Clause 37: Compliance and stop notices –
    a. New section 35B(1) and (7) of the Building Act 1984: “Compliance notices”
    b. New section 35C(1) of the Building Act 1984: “Stop notices”
    c. New section 35D(1), (2) and (3) of the Building Act 1984: “Compliance and stop notices: supplementary”

- New section 39A(6) to the Building Act 1984: “Appeals against compliance notices and stop notices etc”Clause 38: Breach of Building regulations – New section 35(2) and (3) of the Building Act 1984: “Offence of contravening building regulations etc”

[5] As mentioned in paragraph 16 of this memorandum, we have listed the 12 entries in clauses 32, 33 and 34 separately but they are in fact amendments to the matters which may be provided for under one existing delegated power in section 1 of the Building Act 1984.

- Clause 40: Revocation of certain provisions made under section 2(2) of ECA 1972
- Clause 41: Regulation of building control profession –
    a. New sections 58C and 58O of the Building Act 1984: register of registered building inspectors and register of registered building control approvers
    b. New sections 58D and 58P of the Building Act 1984: applications for registration as building inspectors or as registered building control approvers
    c. New sections 58F, 58H, 58I and 58J of the Building Act 1984: code of conduct, professional misconduct investigations, and sanctions
    d. New sections 58R, 58T, 58U, 58V, 58Z, 58Z1, 58Z2, 58Z3, 58Z4, 58Z5, and 58Z6 of the Building Act 1984: professional conduct rules and investigations and sanctions in relation to those rules; operational standards rules and investigations and sanctions in relation to those rules; and reporting requirements
    e. New sections 58U, 58V, 58Z4, and 58Z5 of the Building Act 1984: prescribing cases where sanctions notices must be copied to local authorities
- Clause 43: Functions exercisable only through, or with advice of, registered building inspectors –
    a. New section 46A(1), (2) and (4) of the Building Act 1984: "Building control authorities' restricted functions"
    b. New section 54B(2), (3) and (5) of the Building Act 1984: "Registered building control approvers' restricted functions"
- Clause 45: Higher-risk building work: registered building control approvers –
    a. new section 52A(1), (2) and (4) of the Building Act 1984: "Cancellation of initial notice when work becomes higher-risk building work"
    b. new section 55(2C)(c)(i) of the Building Act 1984: "Appeals"
- Clause 46: Higher-risk building work: public bodies – new section 54A(1) of the Building Act 1984: "Public bodies and higher-risk building work"
- Clause 47: Insurance – amendment to section 47(6), (6B) and (6C) of the Building Act 1984
- Clause 48: Plans certificates – amendment of section 50(1A)(d), (1D) and (7A) of, and paragraph 2(1A)(d) and (1D) and (7) of Schedule 4 to, the Building Act 1984
- Clause 49: Cancellation of initial notice - amendment of section 52(1), (3), (5A), (5B) and (7) of the Building Act 1984
- Clause 50: New initial notices -
    a. New section 53(7)(a) of the Building Act 1984
    b. New section 53(8)(a) of the Building Act 1984
    c. New section 53(12) of the Building Act 1984
    d. New section 53B(5) and (7) of the Building Act 1984: "New initial notice: change of registered building control approver"
    e. New section 53C(3), (4), (5) and (6) of the Building Act 1984: "Consideration of transfer certificate and report"
    f. New section 53D(2), (3) and (5) of the Building Act 1984: "Cancellation of initial notice: change of registered building control approver"

- Clause 51(1): Information gathering – new section 53(4B) and (4C) of the Building Act 1984
- Clause 52: Information –
    a. New section 56A of the Building Act 1984: “Giving information by electronic means: England”
    b. New section 56B of the Building Act 1984: “Requirement to keep register: England”
    c. New section 56C of the Building Act 1984: “Delegation of functions”
    d. New section 55(4) of the Building Act 1984: “(Appeals)”
- Clause 53: Functions under Part 3 of Building Act 1984 – new section 90A(1), (2) and (3) of the Building Act 1984: “Functions under this Part: the regulator etc”
- Clause 54: Minor and consequential amendments - Schedule 5: Minor and consequential amendments in connection with Part 3 –
    a. Paragraph 9(8): amendments to section 6 of the Building Act 1984
    b. Paragraph 11(4): amendments to section 8 of the Building Act 1984
    c. Paragraphs 41 and 43: new sections 47(3A) and 51A(5A) of the Building Act 1984
    d. Paragraph 48(2): amendment to section 57 of the Building Act 1984
    e. Paragraph 55: amendments to section 91A of the Building Act 1984
    f. Paragraph 56: new section 91B(7) of the Building Act 1984: “Cooperation and the sharing of information: Wales”
    g. Paragraph 76: amendment to section 120 of the Building Act 1984
    h. Paragraph 77: new section 120A of the Building Act 1984: “Regulations”
    i. Paragraph 80: new section 125A of the Building Act 1984: “Meaning of Work”
    j. Paragraph 82: amendments to section 134 of the Building Act 1984
    k. Paragraph 83: amendments to Schedule 1 to the Building Act 1984
- Clause 55: Appeals - Schedule 6: Appeals and other determinations –
    a. paragraph 7: new section 43A(2) of the Building Act 1984
    b. paragraph 30: new section 101A of the Building Act 1984: “Appeal: refusal to consider application etc on ground is higher-risk building work”
- Clause 56: Fees and charges - new section 105B of the Building Act 1984: “Fees and Charges”
- Clause 57: Levy on applications for building control approval in respect of higher-risk buildings – new section 105C of the Building Act 1984: “Levies”

Part 4: HIGHER-RISK BUILDINGS

- Clause 59(1): Meaning of “building safety risk”
- Clause 62(2), (3), (4) and (5): Meaning of “higher-risk building”
- Clause 65(1): Modification of Part 4 in relation to certain kinds of higher-risk building
- Clause 68(4): Meaning of “occupied” higher- risk building etc
- Clause 69(7): Meaning of "Accountable Person"
- Clause 71: Part of building for which an accountable person is responsible
- Clause 73(5) Requirement for a completion certificated before occupation

- Clause 75(4) and (5): Registration of higher-risk buildings
- Clause 77(1) and (2): Applications for building assessment certificates
- Clause 78(5) and (6): Building assessment certificates
- Clause 79(1): Duty to display building assessment certificate etc
- Clause 81(3): Appointment of building safety manager where multiple Accountable Persons
- Clause 83(6): Exception from duty to appoint building safety manager
- Clause 84(3): Section 83: further provisions where multiple Accountable Persons
- Clause 85(2): Assessment of building safety risks
- Clause 86(3): Management of building safety risks
- Clause 87(3): Safety case report
- Clause 88(3): Notification and provision of report to the regulator
- Clause 89(1), (2) and (5): Mandatory reporting requirements
- Clause 90(1) to (4): Keeping information about higher-risk buildings
- Clause 91(1) to (4) and (6): Provision of information etc to the regulator, residents and other persons
- Clause 92(2), (3), (4) and (5): Provision of information etc on change in Accountable Person
- Clause 93(1) and (6): Residents' engagement strategy
- Clause 94(1), (3), (4) and (5): Requests for further information
- Clause 95(2) and (3): Complaints procedure operated by the principal Accountable Person
- Clause 96(3) and (4): Complaints procedure operated by the regulator
- Clause 97(4)(b): Duties on residents and owners
- Clause 98(6): Contravention notices
- Clause 101(1) and (7): Compliance notices
- Clause 102(1) and (4): Compliance notices: supplementary
- Clause 103(3): Offence: contravention giving rise to risk of death and serious injury
- Clause 104: Special Measures – Schedule 7 Special measures
    a. Paragraph 2 (11) and (12): Notification by regulator before applying for special measures order.
    b. Paragraph 10(2): Provision of financial assistance by regulator
    c. Paragraph 13 (9) and (10): Notification by regulator before applying to vary special measures order
    d. Paragraph 15(5): Notifications about special measures order
- Clause 107(1), (2), and (3): Appeals against decisions of the regulator made under regulations
- Clause 108(4): Appeals: Supplementary
- Clause 110(1): Guidance
- Clause 113: Implied terms in leases and recovery of safety related costs

  Schedule 8 – Building Safety Charges
    a. paragraph 2(1), (2), (3), (5) and (6) of Schedule 2 to Landlord and Tenant Act 1985
    b. paragraph 4(3) of Schedule 2 to Landlord and Tenant Act 1985
    c. paragraph 6(3) and (4) of Schedule 2 to Landlord and Tenant Act 1985
    d. paragraph 7(3) and (4) of Schedule 2 to Landlord and Tenant Act 1985

    e. paragraph 8(1)(c) of Schedule 2 to Landlord and Tenant Act 1985
    f. paragraph 15(9) of Schedule 2 to Landlord and Tenant Act 1985
    g. paragraph 16(2) of Schedule 2 to Landlord and Tenant Act 1985
- Clause 114: provisions of building safety information: section 49A(5)(f) of the Landlord and Tenant Act 1987

Part 5: OTHER PROVISION ABOUT SAFETY, STANDARDS ETC

- Clause 117: Service charges in respect of remediation works – sections 20ZA(5A), 20D(1), (2), (6) and (9) of the Landlord and Tenant Act 1985
- Clause 120: Establishment of the New Homes Ombudsman scheme
- Clause 122(6), and (7): "Relevant owner", "new build home" and "developer"
- Clause 1241) to (6): Power to require persons to join scheme and to provide information
- Clause 126(1) and (2): Developers' code of practice
- Clause 128: Construction products –
  Schedule 11 - Construction products regulations:
    a. Paragraphs 1 to 15: power to make regulations, and an associated enforcement regime, including the power to create civil and criminal offences.
    b. Paragraph 16: power to create a charging regime.
    c. Paragraph 17 to 19: power to create an Information sharing regime
    d. Paragraph 20(1)(b): power to make transitional, transitory, consequential and supplementary provisions
    e. Paragraph 21: power to repeal, amend or re-enact retained EU law and any other enactment
    f. Paragraph 22: power to create criminal sanctions.
- Clause 129: Amendments to the Regulatory Reform (Fire Safety) Order 2005
    a. new article 21A: provision of information to residents of domestic premises - power to make regulations to enable information about such other matters to be included as well as the timescale and form of information to be provided.
    b. new article 22A: provision of information to new responsible person – power to make regulations to enable information about such other matters to be included within the definition of 'relevant fire safety information' as well as the timescale and form of information to be provided.
- Clause 130(2) and (3): Architects: discipline and continuing professional development
- Clause 132: Power of Architects Registration Board to charge fees – new section 24A of the Architects Act 1997: "Fees"

Part 6: GENERAL

- Clause 138(1) and (2): Power of Secretary of State to make consequential provision
- Clause 139(1) and (2): Power of Welsh Ministers to make consequential provision
- Clause 142: Commencement and transitional provision

C. ANALYSIS OF DELEGATED POWERS BY CLAUSE

Clause 3(5): definition of 'building function'

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

25. Clause 3 outlines two objectives that the Building Safety Regulator must have a view to when exercising its 'building functions'.

26. The clause lists the Building Safety Regulator's main building functions but gives the Secretary of State a power to prescribe additional functions of the Building Safety Regulator so that they are 'building functions'.

Justification for delegation

27. The purpose of the power is to ensure the Building Safety Regulator's objectives, strategic plan, powers to share information, duties to cooperate, and general powers in new section 11A of the Health and Safety at Work etc. Act 1974 will apply to all building functions of the Building Safety Regulator. The power to prescribe enables the Secretary of State to ensure that these provisions apply to any additional functions which are to be undertaken by the Building Safety Regulator, where those functions could appropriately be categorised as building functions (and therefore covered by the objectives, strategic plan and so on).

28. We are aware of two possible scenarios where the power may be needed: (a) where the Building Safety Regulator and a Minister, Government Department or public authority agrees (under section 13(4) of the Health and Safety at Work etc. Act 1974) that the Building Safety Regulator should take on a building-related function from that other body; or (b) where secondary legislation (other than under the Building Act 1984 or under the Building Safety Bill) provides for a new function for the Health and Safety Executive which would be appropriately categorised as a 'building function'.

29. The power does not allow the Secretary of State to remove functions under this Bill, the Building Act 1984 or associated functions under the Health and Safety at Work etc. Act 1974 from the Health and Safety Executive's building functions. This reflects that the Health and Safety Executive will be expected to carry out these functions unless there are changes to primary legislation, and these buildings functions should be covered by the objectives, strategic plan and so on.

Justification for procedure selected

30. Regulations to prescribe under this clause will be subject to the negative procedure. The Government considers that this gives Parliament the appropriate level of scrutiny. The effects of a function being categorised as a 'building function' will mainly be felt by the Building Safety Regulator, as the function will need to be included in its strategic plan; the wider impacts of categorisation as a building function, e.g. being covered by the cooperation and information sharing powers, are not likely to be major, particularly given the limited circumstances in which this power would be used.

Clause 12(1) and (2): Committees: power to amend or repeal

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure

Purpose and context

31. Clause 12 provides the Secretary of State with 'Henry VIII' powers to amend or repeal the provisions in clauses 9, 10 and 11 of this Bill creating the three statutory committees (the Building Advisory Committee, the committee on industry competence and the residents' panel) by regulations subject to the affirmative procedure in both Houses of Parliament.

32. The Government expects that the role of the three statutory committees will evolve over time. The Government considered the option of not specifying that these committees must be established on the face of the Bill, and instead allowing the Building Safety Regulator to set them up and change them if it sees fit using new section 11A(3) of the Health and Safety at Work Act etc. 1974, to enable this flexibility.

33. 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 significant changes in the role of the committees overseen by Parliament through this delegated power.

34. The power also allows the Secretary of State to make amendments of the Building Safety Bill itself, consequential on the exercise of the power. We expect this power would be used, if necessary, to amend references to the statutory committees in the Bill, if the committees were significantly changed. For example, if the composition and name of the residents' panel changed in response to a widening of the scope of the more stringent regulatory regime it might be appropriate to consequentially amend clause 20 (statement of regulator's engagement with residents etc) to better reflect the residents' panel's new composition and name.

Justification for delegation

35. These three committees have been established on the face of the Bill to ensure that the recommendations of the Independent Review are met. This will ensure that the Building Safety Regulator has the benefit of expert advice and information related to its building functions and the standards of buildings (as the Secretary of State currently does from the Building Regulations Advisory Committee for England) and industry competence, and that residents have a strong voice in the work of the Building Safety Regulator.

36. However, 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.

37. We would expect that any proposal to replace, abolish or merge the statutory Committees should form part of a wider set of reforms to improve the way the Building Safety Regulator secures such input, with the aim of improving building safety and standards.

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

- in relation to the Building Advisory Committee, the regulation-making power could be utilised once the Building Safety Regulator and industry have matured, such that their respective roles in developing proposals for guidance and regulations need adapting following experience;
- in relation to the committee on industry competence, the Government considers that the committee's role is essential in the coming years to ensure the delivery of the Independent Review's recommendations on industry competence. However, the long-term objective of policy is that the built environment industry will mature to the point where it can take on greater responsibility for its own standard-setting and competence oversight. Therefore, the eventual repeal of the committee on industry competence provisions could be an indication of success; and
- in relation to the residents' panel, the provisions would need to be reviewed if there are major changes in scope. For example, if hospitals were brought into scope of the Part 4 of the Bill (in occupation regime), consideration would be given as to whether to extend the provisions to include engagement with patients and NHS staff, and representatives of those groups.

Justification for procedure selected

39. Regulations made under this power will be subject to affirmative resolution in both Houses of Parliament. This is a Henry VIII power which could be used to make substantial changes to the committees established by the Building Safety Regulator, or to abolish the committees entirely, as well as making consequential amendments of the Building Safety Act itself. We consider that it is important that Parliament should have the opportunity to debate proposals of this nature and consequently we consider it is appropriate for this

power to be subject to the affirmative resolution procedure in both Houses of Parliament.

Clause 13(2): Local authorities and fire and rescue authorities: provision of assistance etc to regulator

Power conferred on: the Building Safety Regulator
Power exercised by: Direction
Parliamentary procedure: None, but the power cannot be exercised without Secretary of State consent

Purpose and context

40. The purpose of clause 13 is to ensure that the Building Safety Regulator can call upon support, advice and assistance from local authorities and fire and rescue authorities when regulating higher-risk buildings, and local authorities (given their building control expertise) when acting as the building control authority for non-higher-risk buildings (notably in a mixed development including a higher-risk building).

41. 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.

42. To support this, clause 13 enables fire and rescue authorities and local authorities to provide a wide range of support to the Building Safety Regulator to facilitate the Building Safety Regulator's functions in respect of higher-risk buildings, at the request of the Building Safety Regulator. Clause 13 also enables the local authority to support the Building Safety Regulator in providing building control, when the Building Safety Regulator acts as building control authority for a non-higher-risk building (notably one in a mixed development including a higher-risk building). We intend that advice and support would typically be requested by the Building Safety Regulator ahead of certain key regulatory decisions (e.g. the new Gateway two application assessment of plans and documents) or in response to ad hoc issues identified (e.g. in response to escalated resident complaints to the Building Safety Regulator).

43. Clause 13(2) enables the Building Safety Regulator to direct a local authority or a fire and rescue authority to provide support for the purposes specified in clause 13(1).

44. This power to direct can only be used following a written request from the Building Safety Regulator to the authority setting out why the assistance is needed, after the authority has had the opportunity to give reasons why it should not be required to provide the assistance, after the Building Safety Regulator has had regard to reasons provided by the authority, and after the Secretary of State has given consent.

Justification for delegation

45. The Government intends to deliver the Independent Review recommendations for involvement of building control and fire safety advice in key decision-making on higher-risk buildings in a cooperative manner, fully compatible with existing local authority and fire and rescue authority governance whenever possible.

46. Clause 26 and Schedule 3 require the Building Safety Regulator, fire and rescue authorities and local authorities respectively to cooperate in respect of their main functions in respect of higher-risk buildings. Clause 13 provides that the Building Safety Regulator will initially seek to secure support from local authorities and fire and rescue authorities through a request (rather than direction). Clause 16 will support this collaborative approach by enabling the Building Safety Regulator to prepare guidance on the process of requesting support or directing it to assist local authorities and fire and rescue authorities.

47. Despite the steps the Government is taking to encourage cooperation, in order to meet the principles set out in the Independent Review, provision of local authority building control and Fire and Rescue Service support to the Building Safety Regulator inevitably will not in all cases be voluntary. The Government believes that it would be appropriate, after exhausting all other options for securing assistance in regulating higher-risk buildings, for the Building Safety Regulator to be able to insist on assistance from a local authority or fire and rescue authority through a direction.

48. Where the Building Safety Regulator is acting as building control authority for an out of scope building (notably in a mixed development, alongside a higher-risk building), it is appropriate that the Building Safety Regulator can call on the support of local authority building control teams to assist in delivering building control for both the higher-risk building(s) and out of scope building(s) to ensure effective and consistent building control is provided across the development.

49. The requirements for a formal request for assistance to be made by the Building Safety Regulator to the authority, the opportunity for reasons to be provided by the authority justifying not providing assistance, the requirement on the Building Safety Regulator to have regard to those reasons, and the requirement for Secretary of State consent to a direction, together ensure that the power to direct would only be used in extremis. It is nonetheless important that these steps can be taken quickly, if the Building Safety Regulator assesses that a building gives rise to serious safety risks, which it needs assistance to mitigate.

Justification for procedure selected

50. Directions under this power would be given only to specific bodies in very limited circumstances, and only in extremis. The power has a number of safeguards, not least of which is the requirement for Secretary of State consent before the power is used. In addition, it may be necessary for the Building Safety

Regulator to move quickly in issuing a direction, particularly if safety is at risk. For all these reasons, the Government considers that it is appropriate to have no Parliamentary procedure in respect of this power to direct.

Clause 15(4) and (6): Provision of assistance etc: supplementary

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

51. The purpose of clauses 13 and 14 are to ensure that the Building Safety Regulator can call upon support, advice and assistance from local authorities, fire and rescue authorities, and FSO authorised persons (for Crown premises) when regulating higher-risk buildings, reflecting that 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.

52. The provisions also enable the local authority to support the Building Safety Regulator in providing building control, 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).

53. The Government intends that fire and rescue authorities and local authorities will receive appropriate funding to enable them to provide assistance to the Building Safety Regulator. Clause 15 provides two mechanisms for this. The Secretary of State may make grants to local authorities and fire and rescue authorities to support this work. In addition, clause 15(4) enables the Secretary of State to make regulations requiring the Building Safety Regulator to reimburse costs incurred by fire and rescue authorities and local authorities in delivering activities requested or directed by the Building Safety Regulator.

54. Clause 15(6) enables the Secretary of State to make regulations relating to the provision of assistance to the Building Safety Regulator by local authorities, fire and rescue authorities and FSO authorised persons, including around the process for request and direction.

Justification for delegation

55. The power to make regulations relating to reimbursement under clause 15(4) reflects that the requirements and principles governing the reimbursement of fire and rescue authorities and local authorities by the Building Safety Regulator are expected to be of considerable interest to these authorities. It is desirable to provide a degree of certainty to these authorities about funding arrangements through setting out the principles to be followed in regulations,

given that these authorities will employ and train staff in the expectation that their work to support the Building Safety Regulator will be funded.

56. It is also desirable that changes can be made to reimbursement arrangements, reflecting experience of what types of assistance is requested, feedback from authorities on the initial reimbursement system, and experience of what activities are best funded by the Building Safety Regulator drawing on its fee income, and what functions might be funded through the power for the Secretary of State to make grants.

57. The power to make regulations in clause 15(6) relates to the procedure to be followed when requesting and directing assistance under clauses 13 and 14, and the way that assistance would be provided by local authorities, fire and rescue authorities and FSO authorised persons.

58. The reserve power to make regulations in subsection (6) is intended to be used should problems emerge with the process for local authority, fire and rescue authority, and FSO authorised person assistance to the Building Safety Regulator, despite the best efforts of all concerned to cooperate, the provision for duties to cooperate (in Schedule 3) and the preparation of statutory guidance (under clause 16). Ministers can then take appropriate remedial action without the Building Safety Regulator having to rely on overly regular use of the power to direct. Regulations could, for example, require that requests for support should be responded to in specific timeframes, or that support must be undertaken by members of staff who meet specific competence requirements.

Justification for procedure selected

59. The powers are exercised by the Secretary of State making regulations which are subject to the negative procedure in both Houses of Parliament. The detailed rules for reimbursement and for further provision as to dealing with requests and directions are administrative in character and we consider this level of scrutiny is appropriate for provisions of this type.

Clause 16(1): Guidance about the provision of assistance

Power conferred on: the Building Safety Regulator
Power exercised by: publication of guidance
Parliamentary procedure: None, but the guidance cannot be issued, revised or withdrawn without the consent of the Secretary of State

Purpose and context

60. Clause 16 enables the Building Safety Regulator to issue guidance to local authorities, fire and rescue authorities and FSO authorised persons about their provision of assistance to the Building Safety Regulator under clause 13 and clause 14 in regulating the new more stringent regulatory regime for higher-risk buildings.

Justification for delegation

61. The purpose of guidance is to aid policy implementation by supplementing the legal framework provided for in clause 13 and clause 14. Amongst other things, the statutory guidance will provide clear information about how the requirement for local authority and fire and rescue authority staff to have appropriate skills, knowledge, experience and behaviours would be interpreted by the Building Safety Regulator, and what the Building Safety Regulator would consider good reasons for not providing assistance requested by the Building Safety Regulator.

62. It is important that this guidance, which will help secure cooperative and operationally effective relations between public authorities when delivering Building Safety Regulator functions, can be updated rapidly to keep pace with events and operational good practice through revision by the Building Safety Regulator (and with the consent of the Secretary of State).

Justification for procedure selected

63. The guidance intended to be issued under this power will be operational in nature and will be informative rather than imposing legal requirements, and as such, is appropriate to be guidance rather than primary or secondary legislation. In addition, the content of such guidance is likely to change over time in the light of the experience of the Building Safety Regulator, local authorities, fire and rescue authorities and FSO authorised persons in working together to deliver the regime, as well as reflecting technical and technological developments. The Secretary of State will be required to consent to the issuing, revising or withdrawal of any guidance under this power. For these reasons, the Government considers that Parliamentary oversight of this guidance is not required.

Clause 19(2): Annual report about information provided under mandatory reporting requirements

Power conferred on: Secretary of State
Power exercised by: Regulations (statutory instrument)
Parliamentary procedure: Negative Procedure

Purpose and context

64. The new regulatory regime will require dutyholders to report certain information to the Building Safety Regulator on safety occurrences within higher-risk buildings through a mandatory occurrence reporting regime. This clause will require the Building Safety Regulator to publish information about the mandatory occurrence reports it has received from dutyholders on an annual basis.

65. Subsection (2) of this clause makes provision for how to identify information provided under mandatory occurrence reporting obligations. Subsection (2)(a) deals with information provided under the occupation regime in Part 4 of the Bill (on higher-risk buildings).

66. Subsection (2)(b) deals with information provided under the design and build regime in the Building Act 1984. As the mandatory occurrence reporting obligations will be imposed through building regulations, subsection (2)(b) cannot identify them directly. Instead it provides a power to designate the relevant provisions in building regulations.

Justification for delegation

67. As noted above, the mandatory occurrence reporting obligations in design and build will be imposed through building regulations. These mandatory reporting obligations sit in secondary legislation which has not yet been drafted; additionally the relevant obligations may be subject to change, consolidation, amendment and so on, and so cannot be identified directly in primary legislation. Therefore, subsection (2)(b) contains a power for the relevant obligations to be identified in regulations.

Justification for procedure selected

68. Regulations made under this clause will simply list the appropriate provision(s) of building regulations which impose the mandatory occurrence reporting requirements. They are therefore uncontroversial, and we consider it is appropriate they will be subject to the negative resolution procedure in Parliament.

Clause 24(1), (2), (3) and (7): Review by regulator of certain decisions made by it

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

69. This clause enables persons directly impacted by the Building Safety Regulator's decisions to request a review of such decisions. Regulations made under the power in this clause will define the category of decisions that will be reviewable under this provision. The regulations will also set out the persons who may seek a review, and will detail the administrative requirements (e.g. form, time limit for seeking the review) of such requests.

Justification for delegation

70. Some of the decisions which may be reviewed under this clause will be decisions which are only specified in secondary legislation, and so the primary legislation cannot refer to these decisions directly and they must therefore be prescribed. The review regime in turn requires flexibility to identify these decisions and define who is affected by them (a 'prescribed person') and therefore may request a review.

71. Flexibility is also required to update the procedural and administrative rules on timings and the way reviews must be sought. These are detailed procedural matters which are more appropriate to include in secondary legislation and we need flexibility to amend the rules in response to changing circumstances. We do not consider it would be appropriate to include the detailed review procedural provisions in primary legislation.

72. Where powers are taken, it is for specific reasons. Clause 24(1) ensures that the regulator is able to specify in regulations the decisions which will be subject to a clause 24 review. Sub-section (2) allows the regulator to specify who can request a review. This is necessary because some decisions will be created by secondary legislation and it is not currently possible to define all affected persons, who should be able to appeal in respect of those decisions. Subsection (3) is a provision about the form and content of notices. This is a common power used elsewhere in the Bill, for example, in clause 75(5), and clause 102(2). The power will allow the government to specify exactly what the form and content of a notice must be, and afford it a legal standing that guidance would not provide. The precise contents of information required by the form, and manner in which it must be sent, for example, by email to a certain address, may change over time. Finally, subsection (7) grants a power to set a time period in regulations by which the Building Safety Regulator must respond to notices requesting reviews. This is needed to provide flexibility over time to adjust the response time in light of with changing demand.

Justification for procedure selected

73. Regulations to prescribe under this clause are to be subject to the negative resolution procedure in both Houses of Parliament. The rules will be procedural and detailed, including forms and time periods for the review. They are non-contentious, and we therefore consider the appropriate level of scrutiny in Parliament for them is the negative procedure.

Clause 26: Cooperation and information sharing – Schedule 3: Cooperation and information sharing - paragraph 2(2)(c), 2(5)(b), and 2(5)(c): "Local authorities, fire and rescue authorities etc"

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

74. Clause 26 introduces Schedule 3, which creates the powers 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 certain persons to cooperate in connection with certain statutory functions.

75. Paragraph 2 of Schedule 3 ensures that there are powers to share information between the Building Safety Regulator, local authorities, fire and rescue authorities and FSO authorised persons. It also creates reciprocal duties to cooperate between the BSR and local authorities, fire and rescue authorities and FSO authorised persons respectively.

76. The duties to cooperate and powers to share information are designed to foster a culture of joint working between regulators and other key bodies operating in the same regulatory landscape, to support one other to discharge their statutory functions effectively. In particular, they are designed to encourage close working relationships between the Building Safety Regulator, fire and rescue authorities and local authorities, reflecting the Independent Review finding that HSE, local authority and fire and rescue authority expertise should be brought together to regulate higher-risk buildings.

77. Paragraph 2 lists certain functions of each body that will be covered by these powers to share information and duties to cooperate, and then creates delegated powers for these lists to be added to. There are three delegated powers contained in paragraph 2 of Schedule 3:

- A delegated power under paragraph 2(2)(c) enabling the Secretary of State to add additional functions that fire and rescue authorities and the Building Safety Regulator must cooperate in respect of.
- A delegated power under paragraph 2(5)(b) enabling the Secretary of State to add to the list of "relevant functions" of local authorities which are subject to both a duty to cooperate with the BSR, and broader powers to disclose information between the Building Safety Regulator, local authorities, fire and rescue authorities and FSO authorised persons.
- A delegated power under paragraph 2(5)(c) enabling the Secretary of State to add to the list of "relevant functions" of fire and rescue authorities, which are subject to powers to disclose information between the Building Safety Regulator, local authorities, fire and rescue authorities and FSO authorised persons.

Justification for delegation

78. The delegated powers contained in paragraph 2, Schedule 3 to the Bill allow the Secretary of State by regulations to add to the list of functions covered by the powers to share information and duties to cooperate, for local authorities and fire and rescue authorities, through regulations. 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 fire and rescue authorities. The Government does not believe that it can foresee all of 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 their respective statutory functions.

79. In addition, there may be changes to the remit or operational practice of the Building Safety Regulator and the other authorities over time, which could

lead to different functions becoming relevant. This power provides the flexibility to ensure that the Building Safety Regulator and the other authorities can share relevant information that would assist with the delivery of their functions and cooperate in that delivery.

80. Further, it is most appropriate to make provision for fire and rescue authority and local authority functions that are found in secondary legislation through regulations. This avoids the need to alter primary legislation each time secondary legislation setting out relevant fire and rescue authority or local authority functions is altered.

Justification for procedure selected

81. Regulations to prescribe under the power in paragraph 2 of Schedule 3 will be subject to the negative procedure in both Houses of Parliament. Regulations made using this power will identify those operational matters of specified authorities which interact with the new building safety regime. We consider that the choice of negative procedure provides the appropriate level of scrutiny in Parliament, including debate if Parliament considers appropriate, in relation to these matters.

Clause 26: Cooperation and information sharing – Schedule 3: Cooperation and information sharing - Paragraph 6(1) and (2): "Public Authorities"

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure

Purpose and context

82. Clause 26 introduces Schedule 3, which provides the powers 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 certain persons to cooperate in connection with certain statutory functions.

83. The duties to cooperate and power to share information are designed to foster a culture of joint working between regulators and other key bodies operating in the same regulatory landscape, to support one other to discharge their statutory functions effectively.

84. The two delegated powers in paragraph 6 are intended to enable additional powers to share information and duties to cooperate to be created between public authorities by regulations.

85. 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, in the exercise of a building function of

the regulator and any prescribed function of the public authority, so far as the prescribed function relates to England.

86. The second delegated power (at paragraph 6(2)) relates to the disclosure of information and enables the Secretary of State to authorise relevant persons (the Building Safety Regulator, fire and rescue authorities, local 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.

87. The powers are intended to ensure that information can be shared between public authorities in England, and cooperation can be required, where the inter-relationship between their work emerges after Royal Assent due to operational experience, changes to the scope of the higher-risk regime, or changes to the public authority landscape.

88. Circumstances which could justify the use of these powers are:

- if the scope of the higher-risk regime is expanded, such that it is essential that the Building Safety Regulator and local regulators can share information in respect of a new class of higher-risk building with further regulators with overlapping (or otherwise relevant) responsibilities for those buildings. In addition, if the work between the Building Safety Regulator and a further public authority is so critical that a duty to cooperate between them is appropriate;
- 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. Alternatively, if operational experience indicates that close working between the Building Safety Regulator and further public authorities dealing with residents' concerns is essential.

Justification for delegation

89. The rationale for creating a delegated power enabling the creation of new duties to cooperate and powers to share information between the Building Safety Regulator and other public authorities is to futureproof the provisions. It is predictable that further duties to cooperate and powers to share information will be needed to secure the purposes of the primary legislation, but it is not possible to identify ahead of changes in scope, operational experience, or changes to the public authority landscape, what specific further duties to cooperate and powers to share information will be required.

90. Given that the Bill enables the scope of the higher-risk regime to be expanded through regulations, it is appropriate that regulations can also make provision for the operational arrangements necessary to ensure successful delivery by the Building Safety Regulator and other public authorities of any revised scope. Further, it is neither possible nor appropriate to make provision in the Bill speculatively for a full range of additional duties to cooperate or powers to share information between regulators that might hypothetically be needed if the scope were to be changed in future.

91. Changes to the public body landscape or operational experience may also indicate that successful delivery by the Building Safety Regulator of the Bill's objectives requires further duties to cooperate or powers to share information.

92. An example of this is that the Government has set out its intention to ensure that safety concerns raised by residents of higher-risk buildings are dealt with effectively. Operational experience or changes to the landscape of the ombudsmen/redress schemes may indicate that there is a need for the Building Safety Regulator and a further public authority to share information to ensure resident complaints can be dealt with as swiftly and effectively as possible. These two delegated powers enable such technical changes to be made by regulations to secure the wider objectives of the Bill.

Justification for procedure selected

93. Regulations to create and amend duties under paragraph 6(1) and powers under 6(2) will be subject to the affirmative procedure in both Houses of Parliament. This is on the basis that regulations made using these powers will bring into the scope of cooperation and information-sharing new public authorities in a way that has not previously been considered by Parliament. As such, the use of these powers should be subject to debate and approval in both Houses.

Clause 27(1): Fees and charges

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

94. Clause 27 empowers the Secretary of State to make regulations to enable fees and charges to be levied by the Building Safety Regulator in connection with the exercise of its functions in Part 2 of the Bill (which includes the Building Safety Regulator's general functions), Part 4 of the Bill (regulating higher-risk buildings in occupation), and the Health and Safety at Work etc. Act 1974 (including new section 11A, which enables the Building Safety Regulator to make arrangements to deliver its functions). 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.

Justification for delegation

95. The Building Safety Regulator will have responsibility for critical functions, including regulating a new regulatory regime in occupation. 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 to raise fees where it is appropriate to charge for other functions of the Building Safety Regulator.

96. Given that the regulatory regime for higher-risk buildings in occupation is entirely new, judgement will be needed about how to set fees initially to achieve full cost recovery and avoid making profit. It is appropriate that fees can be adapted over time to ensure they achieve this policy aim and remain consistent with the principles governing charging set out in HM Treasury's Managing Public Money.

Justification for procedure selected

97. Regulations to prescribe the regulator's fees and charges and to set the principles under which fees may be determined will be subject to the negative procedure in both Houses of Parliament. Regulations made using this power would be administrative in nature. The choice of negative procedure is considered to provide for the appropriate level of scrutiny and opportunity for debate, if desired, without requiring a debate as a matter of course. In addition, it is consistent with the current procedure for fee-related regulations made under the Building Act 1984.

Clause 29(1) and (3): definition of 'building' in Part 2

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

98. This clause includes a definition of 'building' for the purposes of Part 2 of the Bill (the regulator and its general functions) which is any permanent or temporary building in England. The clause includes the power for the Secretary of State, by regulations, to prescribe types of buildings which are excluded from this definition.

99. The clause also includes the power in subsection (3) for the Secretary of State, by regulations, to prescribe that any provision of Part 2 applies also to structures, erections, vehicles or vessels.

100. These provisions are similar to the provision made in section 121 of the Building Act 1984.

Justification for delegation

101. This power is only relevant to the general building safety duties placed on the Building Safety Regulator in clauses 3 and 5 of the Bill.

102. The Bill sets out a broad definition of “building”, ensuring that the Building Safety Regulator will have a broad duty to keep the safety and standards of buildings under review at clause 5, and that the regulator’s statutory objectives apply across a broad range of buildings.

103. For a small number of types of buildings it may not be necessary or appropriate for the Building Safety Regulator to be under a duty in relation to them. This could, for example, reflect that a narrow category of buildings is already subject to an existing regulatory regime, and operational experience indicates that maintaining overlapping regulatory remits is not working effectively. The Secretary of State, therefore, needs a power to exclude some types of buildings from the general function of the Building Safety Regulator at clause 5, and the Building Safety Regulator’s statutory objectives at clause 3. It is not possible, in advance, to set out a full list of exclusions, given the need for practical experience operating the new regulatory regime by the Building Safety Regulator.

104. Similarly, it may be that certain structures which currently are not included in the definition of building need to be brought within that definition to enable the Building Safety Regulator to exercise its general duties in relation to them.

Justification for procedure selected

105. The powers in this clause are subject to the negative resolution procedure in both Houses of Parliament. We do not consider use of the powers will be controversial, we envisage using these powers only to exclude buildings already covered by other regulatory regimes or to include other structures. We therefore consider it is appropriate for these regulations to be subject to the negative procedure.

Clause 30: Higher-risk buildings etc – new sections 120D(2), (3), (4), (5) and (6) (meaning of “higher-risk buildings”: England) and 120I(2) and (4) (higher-risk buildings and higher-risk building work: Wales)

New section 120D(2)(b) and (4)(c) of the Building Act 1984 “Meaning of “Higher-risk Building”: England”

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure

Purpose and context

106. This clause inserts a number of new sections into the Building Act 1984. New section 120D of the Building Act defines a higher-risk building, for England, as a building in England which is at least 18 metres in height or has at least 7 storeys. Section 120D additionally includes powers to specify in regulations the description of those buildings which are to be ‘higher-risk buildings’ and any

exclusion from that definition, for the purposes of the Building Act 1984, and therefore which buildings will be subject to the more stringent building control regulatory regime. Section 120A(3) of the Building Act 1984 (inserted by Schedule 5 to the Bill) provides that when the Secretary of State is making such regulations they may describe buildings by size, design, use, purpose, or other characteristics. The government proposes to use the power in section 120D(2)(b) to include all types of residential buildings (and care homes and hospitals) within scope of the new more stringent regime. The government proposes to use the power in section 120D(4)(c) to exclude secure residential institutions (e.g. prisons), buildings solely occupied for the purposes of the armed forces and temporary leisure establishments (e.g. hotels) from being treated as higher-risk buildings. We have detailed these proposals in indicative regulations published alongside this Bill. The powers in section 120D(2)(b) and (4)(c) allow the scope of the regime to remain flexible and the effect is that the definition of 'higher-risk buildings' can be amended in line with evidence or experience of the operating regime.

107. Regulations made under section 120D(2)(b) and (4)(c) are subject to the affirmative procedure.

Justification for delegation

108. The Independent Review was clear that the Government should have the ability to quickly respond to newly identified building safety risks in different types of buildings. We can achieve this by changing the definition of 'higher-risk building' to take these buildings into account.

109. This clause will therefore enable the Secretary of State to make regulations to amend the description of buildings which are to be 'higher-risk buildings'. Before making regulations which add a description of building to the definition of 'higher-risk building', the Secretary of State must receive a recommendation or advice from the Building Safety Regulator, consult other appropriate persons and undertake and publish a cost benefit analysis. If the Secretary of State uses these powers to make regulations which have another effect, they must consult the Building Safety Regulator (unless they have already received advice or a recommendation from the Regulator) and other appropriate persons beforehand.

Justification for procedure selected

110. Regulations made under these powers will be subject to affirmative resolution procedure in both Houses of Parliament. These powers allow the Secretary of State to specify which types of buildings will be higher-risk buildings for the purposes of the Building Act 1984 and are therefore subject to the more stringent regulatory regime imposed by and under that Act. It is considered that the use of the power will be of significant interest to Parliament so it is important Parliament has the opportunity to debate proposals of this nature and consequently it is appropriate for this power to be subject to the affirmative resolution procedure in both Houses of Parliament.

New section 120D(3), (4)(a), (4)(b) and (5) of the Building Act 1984: "Meaning of "Higher-risk Building": England"

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

111. Clause 30 also includes a power in section 120D(3) to make regulations to supplement the provisions in section 120D, to support this section. This includes the power to define what amounts to a building or a storey ((4)(a) and (5)) and how the height of a building is measured ((4)(b)).

112. Subsection (5) specifies that a range of other structures, erections and movable objects could be defined as a "building". This is similar to the provision made in section 121 of the Building Act 1984. The Building Safety Regulator has general building safety and standards duties under clause 5 of the Building Safety Bill. Clause 29(3) provides that this duty could cover other structures, erections or movable objects, though we do not currently propose to use it. If the power under 29(3) is used in the future, then intelligence from undertaking the duty in clause 5 could result in the Regulator making a recommendation to alter the definition of building given in regulations made under this power.

113. We intended to use the power to provide for a building to include any structure or erection, for below-ground storeys to be ignored when counting the number of storeys in a building and for a mezzanine whose floor area is more than half of the floor area of the largest storey to count as a separate storey. We have detailed these proposals in indicative regulations published alongside this Bill.

114. The power is subject to the negative resolution procedure in both Houses of Parliament, apart from when it is used by virtue of subsection (4)(c) to make regulations excluding specified descriptions of building from the 'higher-risk building' definition (see above). The Regulator and any other person that the Secretary of State considers appropriate must be consulted before regulations are made.

Justification for delegation

115. Following pre-legislative scrutiny, the Housing, Communities and Local Government Committee recommended defining 'higher-risk buildings' in the Bill. The definition of 'higher-risk buildings' includes terms whose definitions are principally technical. It is considered that defining these terms is more suited to regulations.

116. When making regulations under this power, section 120E provides that the Regulator and any other person that the Secretary of State considers appropriate must be consulted before regulations are made. The Regulator need not be consulted if it provided a recommendation to make the new regulations.

Justification for procedure selected

117. Regulations made under this power will be subject to the negative resolution procedure in both Houses of Parliament. This power includes provision to provide principally technical definitions. We consider the negative resolution procedure provides sufficient scrutiny of regulations made under this power.

New section 120D(6) of the Building Act 1984: Meaning of "Higher-risk Building": England"

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure

Purpose and context

118. The clause also includes a power in section 120D(6) to amend any part of the clause defining "higher-risk building" apart from subsections (1), (3) and (6). This Henry VIII power could be used, for example, to amend the height requirement which is on the face of the Bill and thereby change which buildings are higher-risk buildings and therefore subject to the more stringent regulatory regime under the Building Act 1984. This power allows the scope of the regime to remain flexible and that the definition of 'higher-risk buildings' can be amended in line with evidence or experience of the operating regime. The Independent Review stated "*it will be important to ensure that government can respond quickly in the future, where necessary, to broaden this definition in light of either critical new information emerging (e.g. through incident reporting or whistle-blowing) or experience of operating the new regime*."

119. The power in section 120D(6) is subject to the affirmative resolution procedure.

Justification for delegation

120. The Independent Review was clear that the Government should have the ability to quickly respond to newly identified building safety risks in different types of buildings. We can achieve this by changing the definition of 'higher-risk buildings' to take these buildings into account.

121. This power will therefore enable the Secretary of State to make regulations to amend the definition of buildings which are to be 'higher-risk buildings'. Before making regulations which add a description of building to the definition of 'higher-risk building', the Secretary of State must receive a recommendation or advice from the Building Safety Regulator, consult other appropriate persons and undertake and publish a cost benefit analysis. If the Secretary of State uses this power to make regulations which have another effect, they must consult the Building Safety Regulator (unless they have already received advice or a recommendation) and other appropriate persons beforehand.

122. Following pre-legislative scrutiny, the Housing, Communities and Local Government Committee recommended defining 'higher-risk buildings' in the Bill. Consequently, this power is required to ensure the definition of higher-risk building can be amended in line with evidence or the experience of the operating regime.

Justification for procedure selected

123. Regulations made under this power will be subject to the affirmative resolution procedure in both Houses of Parliament. This Henry VIII power allows section 120D, which defines which buildings will be higher-risk buildings, to be amended and therefore can change which buildings are subject to the more stringent regulatory regime imposed by and under the Building Act 1984. It is considered that the use of the power will be of significant interest to Parliament and therefore should be subject to the scrutiny of debates and approvals in both Houses of Parliament.

New section 120I(2) of the Building Act 1984: "Higher-risk buildings and higher-risk building work: Wales"

Power conferred on: Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Senedd procedure: Affirmative procedure

Purpose and context

124. This clause also inserts section 120I into the Building Act 1984 which applies in relation to Wales only. New section 120I(2) of the Building Act gives Welsh Ministers a wide power, by regulations, to define higher-risk buildings, in relation to Wales. The power is subject to the affirmative procedure in Senedd Cymru.

Justification for delegation

125. There are fewer high-rise buildings and the scale of future high-rise development activity is expected to be significantly less in Wales than in England. Welsh Ministers have decided therefore not to extend the regulator into Wales and rely instead on a more stringent building control regime for higher-risk buildings to be administered by local authorities. Nevertheless, the same need to have the ability to quickly respond to newly identified building safety risks in different types of buildings, and subsequently change the definition of 'higher-risk buildings' to take these buildings into account exists for Wales. Welsh Ministers intend to consult on the definition of higher-risk building in Wales.

Justification for procedure selected

126. New section 120I(2) provides Welsh Ministers with a power to define 'higher-risk buildings' subject to an affirmative resolution of Senedd Cymru after

consulting with the Building Regulations Advisory Committee for Wales and such other persons as the Welsh Ministers consider appropriate (see section 120C, inserted by Schedule 5). This power defines which buildings will be higher-risk buildings and therefore subject to the more stringent regulatory regime imposed by the Building Act 1984 and building regulations in Wales. It is considered that the use of the power will be of significant interest to the Senedd and therefore should be subject to the scrutiny of Senedd debates and approvals.

New section 120I(4) of the Building Act 1984: "Higher-risk buildings and higher-risk building work: Wales"

Power conferred on: Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)Senedd procedure: Negative procedure

Purpose and context

127. Subsection (4) of section 120I ensures the Welsh Ministers have the necessary flexibility to define "building" for the purposes of the definition of "higher-risk building", mirroring the position in England (see section 120D(4)(a)). This power will enable the Welsh Ministers to add clarity to the definition of "higher risk building" as required.

128. Subsection (5), like section 120D(5), specifies that a range of other structures, erections and movable objects could be defined as a "building". This is similar to the provision made in section 121 of the Building Act 1984.

Justification for delegation

129. As in relation to section 120D(4), the definition of "building" is primarily a technical matter, which may require refinement over time as a result of operational experience. We therefore consider that it is appropriate to define this term in regulations.

Justification for procedure selected

130. The negative procedure mirrors the position for England in 120D. Whilst the core power to define "higher risk buildings" is subject to the affirmative procedure, the power to define "building" is a more technical one, and so we consider the negative resolution procedure provides sufficient scrutiny of regulations made under this power.

Clause 31: Building control authorities – new sections 91ZB(1) of the Building Act 1984 "The regulator: building control authority for other work" and 91ZC(2), (3) and (6) of the Building Act 1984 "Section 91ZB: supplementary"

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative procedure

Purpose and context

131. Clause 31 amends section 91 of, and inserts new sections 91ZA, 91ZB, 91ZC and 121A into, the Building Act 1984 to set out when the Building Safety Regulator will be the building control authority for building work in England.

132. New section 91ZB enables the Building Safety Regulator to be the building control authority for work which has a prescribed connection with higher-risk building work, by issuing jointly with the person carrying out the work a 'regulator's notice'.

133. We expect to use this power to provide that a regulator's notice can be issued where there is a development comprising both higher-risk buildings and non-higher-risk buildings on one site. In these circumstances if the person carrying out the work wishes to deal with just one building control authority, the Building Safety Regulator would take this role (if it agrees to do so), as only the Building Safety Regulator can undertake building control work for a higher-risk building.

134. There will be limited, prescribed grounds for a local authority to reject a regulator's notice and a prescribed time period within which a notice of rejection should be given, otherwise the notice is treated as accepted. The grounds for rejection and the time period for doing so will be prescribed in building regulations, using the powers in subsections (2) and (3) of new section 91ZC.

135. Subsection (6) of new section 91ZC provides powers for building regulations to prescribe the form and content of a regulator's notice and a local authority notice of rejection, information to be supplied with the notices, and the way notices should be issued.

136. Provisions relating to regulator's notices mirror to some extent the existing arrangements in section 47 of the Building Act 1984 for the issue of an initial notice by an Approved Inspector to a local authority, in particular that it can only be rejected on grounds prescribed in building regulations and that building regulations can prescribe the form and content of initial notices. The form and content and grounds for rejection of initial notices are set out in Regulation 10, Form 1 of Schedule 1 and Schedule 2 of the Building (Approved Inspectors etc.) Regulations 2010.

Justification for delegation

137. The Building Act 1984 already provides for the time period for rejection of, and the form and content of initial notices to be prescribed in building regulations (as mentioned above). This recognised that it was important to have flexibility to set out the detail required to be included, and in particular the exact format in which notices are to be issued, and that this was best done in secondary legislation. The Government considers that this principle holds equally for the grounds of rejection of and form and content of regulator's notices.

138. The grounds for rejection, time period for rejection, and the form and content of a regulator's notices may need to be adjusted in the light of experience with the operation of the new regime. Enabling this to be done through secondary legislation will allow for changes to be made in a timely manner.

139. It is also appropriate to have flexibility in defining the precise circumstances in which a regulator's notice may be given, i.e. the connection that the work must have to higher-risk building work. As described above in the first instance we expect that we will prescribe this to cover non-higher-risk building work taking place on the same development as higher-risk building work, but over time as the new regime matures, we may want to widen (or indeed narrow) the circumstances in which a regulator's notice may be given.

Justification for procedure selected

140. Regulations made under new sections 91ZB or 91ZC will be subject to the negative procedure in both Houses of Parliament. We consider this appropriate as the provisions will be largely procedural and uncontroversial and likely to be integrated with other provision in the building regulations related to the form and content of notices. This is also consistent with the existing procedure for building regulations generally, which are made using the negative procedure (see section 1(4) of the Building Act 1984).

Clause 31: Building control authorities - section 91ZD(1) to (4) – higher-risk building work in Wales: local authority work.

Power conferred on: Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Senedd procedure: Negative procedure

Purpose and context

141. Clause 31 also inserts section 91ZD into the Building Act 1984. This new section applies to Wales and is a power to make regulations, which will enable Welsh Ministers to make provision about designating an alternative local authority to act as building control authority where the local authority for an area is itself proposing the development of a higher-risk building. It is intended as a response to the Independent Review's concern that to choose who regulates one's own developments presents a conflict of interest.

142. The new section provides powers for Welsh Ministers to prescribe matters that require notification by the relevant local authority to Welsh Ministers. It confers on the Welsh Ministers a power to make regulations making provision for restricting (or preventing) the local authority for the area exercising functions in relation to the higher-risk building work; designating another local authority to act as the building control authority in relation to higher-risk building work (instead of the local authority for the area) and provides a power to enable the Welsh Ministers, in regulations, to require the local authority for the area to provide

specified information to assist Welsh Ministers in deciding whether to exercise the power of designation.

143. Regulations under section 91ZD may also provide that, where a local authority is designated as the building control authority in relation to the higher-risk building work, that the 'developer' local authority and the designated local authority may agree that the designated local authority is to be the building control authority in relation to any work of a prescribed description that has a prescribed connection with the higher-risk building work. This is to address the situation where a development comprises both higher risk building work and work that falls outside of that definition (e.g. a combination of high rise residential and commercial accommodation) and there are procedural benefits in having a single building control authority for the development.

144. Section 91ZD also provides that where a local authority is designated under the regulations, prescribed functions (including enforcement functions) are functions of the designated local authority rather than functions of the local authority for the area.

Justification for delegation

145. The decision to designate another local authority to act as building control authority needs to respond to the circumstances of the project in question and is therefore best placed with Welsh Ministers whose decision will be informed by specific information requested from the local authority proposing the development.

146. Section 91ZD allows Welsh Ministers to make procedural rules (notification of them etc) in relation to designation of a new authority. These provisions will be technical and procedural, and it is appropriate for them to be in secondary legislation rather than in the primary legislation.

Justification for procedure

147. Regulations made under new section 91ZD will be subject to the negative procedure in the Senedd, this is consistent with the general approach taken with building regulations which are made using the negative procedure. Furthermore, the regulations will be technical and procedural and Welsh Ministers consider it is appropriate for them to be subject to the negative procedure in the Senedd.

Clause 32: Building regulations – Schedule 1 to the Building Act 1984

Background

148. Section 1 of, and Schedule 1 to, the Building Act 1984 provides powers to make building regulations which set out the technical and procedural matters relating to building work. Historically, before the requirements for building control were standardised on a national basis by the Building Act and its predecessor

legislation, these technical and procedural matters would have been set out in local authority byelaws.

149. Clause 32 of the Bill amends Schedule 1 to the Building Act 1984 to expand and clarify the types of technical and procedural provisions which can be made under the existing broad regulation-making power in section 1 of the Act. In particular, the new provisions inserted into Schedule 1 provide more detail of the matters which may be covered in building regulations compared to the current powers, which provide very little detail. Consequently, paragraphs 2, 3, 4, 4A, and 4B of Schedule 1 will be repealed.

150. For the ease of reference the new provisions being inserted into Schedule 1 by clause 32 are described here as nine separate items in the following paragraphs but it should be noted they do in fact amend the matters which may be covered in the same single delegated power (section 1 of the Building Act 1984).

New paragraphs 1A of Schedule 1 to the Building Act 1984: "Procedural requirements etc: general" and 1B "Applications for building control approval"

Power conferred on: Secretary of State and Welsh Ministers)
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Negative procedure

Purpose and context

151. Paragraph 1A of Schedule 1 provides that building regulations may make provision about the procedure which may or must be followed in relation to work. It then goes on to give more detail about the sort of procedural provision that may be made, including provision about applications to building control authorities (i.e. local authorities and the Building Safety Regulator), certificates, notices, and consultation with prescribed persons as part of these procedures.

152. Paragraph 1A also allows building regulations to confer powers on building control authorities to require persons to notify them of specified matters. This power will be used to ensure regulatory oversight during construction by enabling building control authorities to require developers to notify them of changes to approved plans and documents and when they have reached particular stages of work, so that the building control authority can inspect that work (e.g. when the developer has finished the foundations, the authority may want to inspect the foundations before they are covered up).

153. Regulations under paragraph 1A can make provision with regard to how applications are to be granted or refused (including when they are deemed granted or deemed refused, e.g. if the building control authority does not make a decision on the application within the prescribed time period), and the effects of the granting of an application and of the issue of a certificate.

154. Paragraph 1B of Schedule 1 gives more detail about a particular type of application made to building control authorities, which is an application for

building control approval. This replaces the current 'deposit of plans' procedure. Paragraph 1B deals with the matters which may be covered by this approval. Providing building control authorities the ability to set requirements when granting applications for building control approval, such as requiring the submission of revised versions of documents, setting out that work cannot proceed beyond a certain stage without further approvals, and that applications for the approval of changes which occur during construction will be needed.

155. Paragraph 1B(5) sets out that in prescribed applications for building control approval, intended to only be for certain building control applications for refurbishment in higher-risk buildings, applicants will be able to submit plans and the documents that appear appropriate to the proposed work. Building control authorities will have the ability to request further information and refuse applications where the applicant fails to provide this.

Justification for delegation

156. The Independent Review set out in some detail the procedural arrangements which should be put in place for increased regulatory oversight of higher-risk buildings, in particular what are referred to as 'Gateways', i.e. more stringent procedural requirements. These procedural requirements will need to be specified in detail to implement those recommendations. Providing for this to be done in secondary legislation provides more flexibility for how those procedural details can be described. It also provides the opportunity for consultation with affected bodies. By way of precedent, Part 3 of the Building Regulations 2010 already sets out detailed procedural requirements for the current building control regime.

157. It is likely that over time, changes will need to be made to procedural requirements to reflect the experience of operating new procedures such as the Gateways. Having the powers to make changes in secondary legislation will improve the Government's ability to promulgate any necessary changes in a timely manner, to ensure that procedures remain fit for purpose.

158. As well as implementing the recommendations in the Independent Review, the Government envisages changes will need to be made to Part 3 of the Building Regulations 2010 to update the procedural requirements therein, which will apply to non-higher-risk buildings. The Government believes that there will be considerable value in consolidating all the procedural requirements relating to building control applications and approvals in secondary legislation, as this would enable users to navigate more easily the legislative requirements which affect them.

Justification for procedure selected

159. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament, and in respect of Wales in Senedd Cymru. We consider this is appropriate as the provisions will be largely procedural, relating to the administration of relevant procedures, and likely to be integrated with other provisions in the building regulations related to procedural

matters. This procedure is consistent also with the existing procedure for building regulations generally, which are subject to the negative procedure (see section 1(4) of the Building Act 1984).

New paragraph 1C of Schedule 1 to the Building Act 1984: "Certificates: approved schemes"

Power conferred on: Secretary of State and Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Negative procedure

Purpose and context

160. New paragraph 1C, to be inserted into Schedule 1 to the Building Act 1984, provides more detail on matters relating to approved schemes for the issue of certificates, pursuant to paragraph 1A(2)(c). It is envisaged that to be able to give a certificate regarding compliance with building regulations, a person will need to be a member of an approved scheme, similar to current arrangements set out in regulations 20 and 20A of the Building Regulations 2010.

161. 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 may be provided by schemes approved by the appropriate national authority (the Secretary of State in England and Welsh Ministers in Wales).

162. In conjunction with new paragraph 1A(2)(c) and new paragraph 1A(3)(d), this new power will replace existing powers in paragraphs 4 and 4A of Schedule 1 to the Building Act 1984.

Justification for delegation

163. Arrangements for self-certification schemes and third-party certification schemes are already provided for in building regulations (regulations 20 and 20A of the Building Regulations 2010). The Government would expect to use the new powers to replace regulations 20 and 20A.

164. The Government envisages that schemes for persons issuing certificates will need to meet conditions of approval before they can be approved and may also be subject to limitations on their approval. For example, a scheme may or may not be approved to issue certificates in relation to work on higher-risk buildings. The arrangements for doing this, and for any procedures relating to the suspension or withdrawal of approvals, are best set out in secondary legislation given the detail which may need to be included. This also gives the opportunity for consultation on the approval arrangements.

165. It is likely that over time, changes may need to be made to these arrangements for approving schemes or the conditions of approval to reflect the experience of operating them, for example to reflect the role of the Building Safety Regulator (in England). Having the powers to make changes in secondary legislation will improve the Government's ability to promulgate any necessary changes in a timely manner, to ensure that procedures remain fit for purpose.

Justification for procedure selected

166. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament, and in relation to Wales Senedd Cymru. We consider this is appropriate as the provisions will be largely procedural, relating to the system for administering scheme approvals. This procedure is consistent also with the procedure for building regulations generally, which are made using the negative procedure (see section 1(4) of the Building Act 1984).

New paragraph 1D of Schedule 1 to the Building Act 1984: "Obtaining, keeping and giving information and documents"

Power conferred on: Secretary of State and Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Negative procedure

Purpose and context

167. New paragraph 1D of Schedule 1 to the Building Act 1984 strengthens powers relating to information provision, as the current powers are considered to be insufficient to ensure there is sufficient information about higher-risk buildings in scope of the new regime for the maintenance of building safety. The new paragraph 1D(1) provides a power for building regulations to make provisions about information or documents that can be required under the regulations.

168. New paragraph 1D(2)(a) sets out that the building regulations may prescribe standards for the management and storage of information or documents. New paragraph 1D(2)(b) sets out that the building regulations may impose requirements about how the information or documents are kept up to date. This power enables the Secretary of State (or, as respects Wales, Welsh Ministers) to require that information can be easily used to maintain building safety as the requirements will ensure the information is accessible, secure, usable and up to date.

169. New paragraph 1D(2)(c) allows building regulations to confer on building control authorities or other prescribed persons the power (in prescribed circumstances) to require a person to give information to them. This power enables the Secretary of State (or, as respects Wales, Welsh Ministers) to define the prescribed person and prescribed circumstances and ensures regulators will have the ability to require additional information.

170. New paragraph 1D(3) allows building regulations to make provision regarding the admissibility in criminal proceedings of any information required to

be given by building regulations. This power enables the Secretary of State (or, as respects Wales, Welsh Ministers) to make provisions limiting the circumstances in which the information provided could be admissible in criminal proceedings, for example, equivalent to those found in clause 87(6).

Justification for delegation

171. The Secretary of State and Welsh Ministers need the power to specify the prescribed standards that will set out how information and documents (required under the building regulations) will need to be stored and managed by the relevant dutyholder.

172. The Independent Review was clear that at present building information is often incomplete or inaccurate and there are insufficient rules on the creation, maintenance and handover of information. The lack of information has undermined building safety. The new regime will impose more stringent requirements on information production, management and handover. This is known as the golden thread of information. This will be done through clear prescribed standards. It is likely that over time, changes may need to be made to the standards to reflect technological and procedural developments in digital and information management technology. It is also likely that the interpretation of what 'up to date' means may alter as digital and construction technology develops. This delegated power is required to allow these changes to be made quickly via regulations.

173. The Secretary of State and Welsh Ministers also need the power to define who is a prescribed person for the purposes of requiring information and defining the prescribed circumstances when this requirement can be imposed. We also intend to use the power to require dutyholders to report information about safety incidents taking place during building work. The information that must be reported will be specified in secondary legislation, as will the limitations as to the admissibility of such information in criminal proceedings. Developments in our understanding of safety risks as well as changes to safety practices mean that some flexibility will be needed to change the prescribed information required over time.

Justification for procedure selected

174. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament and, in relation to Wales, Senedd Cymru. We consider this is appropriate as the provisions will be largely procedural. This procedure is consistent also with the procedure for building regulations generally, which are made using the negative procedure (see section 1(4) of the Building Act 1984).

New paragraph 1E of Schedule 1 to the Building Act 1984: "Reporting requirements: duty to establish and operate system"

Power conferred on: Secretary of State and Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)

Parliamentary/Senedd procedure: Negative procedure

Purpose and context

175. The new paragraph 1E in Schedule 1 applies where building regulations made by virtue of paragraph 1D provide that in prescribed circumstances a prescribed person must give prescribed information to the Building Safety Regulator (in England) and the building control authority (in Wales). Paragraph 1E(2) provides that building regulations may require a prescribed person to establish and operate a system to facilitate the giving of the information to a prescribed person.

176. Paragraph 1E is intended to be used in England to require Principal Contractors and Principal Designers to establish and operate a system of mandatory occurrence reporting according to requirements that will be set out in secondary legislation.

Justification for delegation

177. Flexibility is required when setting out the requirements for mandatory occurrence reporting systems because changes to the UK's built environment, and the related safety risks and best practices for safety, will likely cause the requirements regarding the systems for collecting and submitting occurrences to change over time.

Justification for procedure selected

178. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament and, in relation to Wales, Senedd Cymru. We consider this is appropriate as the provisions will be largely procedural and technical. This is consistent also with the procedure for building regulations generally, which are made using the negative procedure (see section 1(4) of the Building Act 1984).

New paragraph 1F of Schedule 1 to the Building Act 1984: "Form and content of documents etc"

Power conferred on: Secretary of State and Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Negative procedure

Power conferred on: Secretary of State and Welsh Ministers and others
Power exercised by: Directions
Parliamentary/Senedd procedure: No procedure

Purpose and context

179. Where building regulations provide that any document may or must be given, the new paragraph 1F(1) provides a power to make provision regarding the form and content of such documents, the information and documents that must

accompany it, and the way that the documents must be given. Paragraph 1F(2) further provides that where building regulations provide that any information (not in the form of a document) may or must be given, they may make provision about the way in which it is to be given.

180. New paragraph 1F(3) sets out that building regulations may provide that the matters set out in 1F(1) and 1F(2) can be specified in a direction made and published in accordance with the regulations. In England we expect that we will use this power to enable the Building Safety Regulator to specify how it would like to be provided with certain information; for example, mandatory occurrence reports will probably be provided to the Building Safety Regulator through an online portal.

181. New paragraph 1F(4) sets out that building regulations can provide that in prescribed applications, intended to only be used for certain applications relating to the refurbishment of higher-risk buildings, applicants must provide prescribed documents as they consider appropriate, and that further information or documents can be required by the building control authority. It also sets out that such applications can be refused if a prescribed document is not provided to the building control authority on request.

Justification for delegation

182. The Independent Review made recommendations for additional prescribed documents to be a mandatory requirement for building control applications for higher-risk buildings (Gateways and refurbishments), and for increased regulatory oversight. These documents are to demonstrate that appropriate building safety considerations are made before construction commences, and that these considerations continue to be in place during construction to ensure that the completed building is safe to occupy.

183. The form, content and accompanying materials of the prescribed documents will need to be specified and detailed to ensure minimum standards are met, provide clarity about what the requirements are, and to ensure that the information is accessible to building owners to enable them to effectively manage the building in use.

184. In England new paragraph 1F(4) is intended to be used for certain applications for refurbishments in higher-risk buildings, to ensure proportionality as building work can be hugely variable in scale, and may be contained within a flat, or be to the common parts or external walls of a building. In England it will enable the Building Safety Regulator to request further information and refuse the application if further information is not provided.

185. New paragraph 1F will also be used in England for the submission of mandatory occurrence reports to ensure that the content of a report includes the necessary information for the Building Safety Regulator to identify the relevant safety risk. It is necessary to ensure that the technical information required in reports is kept up to date. For example, new building risks may develop over

time, and the information to be submitted to the Building Safety Regulator may therefore need to change.

186. Regulations in relation to England will set out the form of the documents and how the documents should be submitted to the Building Safety Regulator. Provisions are subject to change over time to accommodate developments in methods of assessments, technological changes, and emerging risks, and require procedural flexibility that is not appropriate for primary legislation.

187. Having the powers to make changes in secondary legislation will improve the Government's ability to promulgate any necessary changes in a timely manner, to ensure that procedures remain fit for purpose. For the same reasons, Welsh Ministers having the power to make changes in secondary legislation will improve their ability to respond to changes in circumstances in a timely manner.

Justification for procedure selected

188. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament or, in relation to Wales, Senedd Cymru. We consider this is appropriate as the provisions will be largely procedural building regulations related to the form and content of prescribed documents and information. This is consistent with the procedure for building regulations generally, which are made using the negative procedure (see section 1(4) of the Building Act 1984).

New paragraph 1G of Schedule 1 to the Building Act 1984: "Inspection, testing etc"

Power conferred on: Secretary of State and Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Negative procedure

Purpose and context

189. Paragraph 1G, to be inserted into Schedule 1 to the Building Act 1984, provides powers for building regulations to make provision relating to the testing and sampling of work or the building, and for prohibiting the covering up of work within a prescribed time period after a specified event, and the cutting into or laying open of the work or building, or pulling down of work in order to inspect, test or sample it.

190. It replaces the existing powers in paragraphs 2(d) and 2(e) in Schedule 1 which have been used to make Regulations 45 to 46 of the Building Regulations 2010 and Regulation 8(1) of the Building (Approved Inspectors etc.) Regulations 2010. Regulation 16(3)(b) of the Building Regulations 2010 enables a local authority to notify a person carrying out work of a period within which work must not be covered up, where the local authority intends to inspect the work.

Justification for delegation

191. Provision to allow for local authorities and registered building control approvers to test and inspect work and take samples already appears in paragraphs 2(d) and (e) of current Schedule 1, as described above. The proposed new powers are largely consistent with the existing powers used to make those regulations but provide further detail at paragraph 1G(2).

192. Arrangements for testing and sampling, or for prohibiting the covering up of work, may require detailed procedures to be put in place (see for example Regulation 16 of the Building Regulations 2010) which are more appropriate for secondary legislation. It is important that procedural changes can be made in the light of experience.

Justification for procedure selected

193. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament and, in relation to Wales, Senedd Cymru. Building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and the Government believes that it is appropriate to maintain this procedure for regulations made under clause 32, in order to maintain consistency and because their content will be largely procedural.

New paragraph 1H of Schedule 1 to the Building Act 1984: "Applications to building control authorities: extension of period by agreement"

Power conferred on: Secretary of State and Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Negative procedure

Purpose and context

194. Paragraph 1H, to be inserted into Schedule 1 to the Building Act 1984, provides powers for building regulations to make provision for a building control authority, with the agreement of the applicant, to extend a prescribed time period within which an application must be decided.

Justification for delegation

195. Building control authorities must make decisions on applications for building control approvals within prescribed timescales. However, there will be occasions when the complexity of the proposals will not make it possible to assess the plans and other documents, and reach a decision, within the prescribed timescale.

196. There will need to be a flexible arrangement for the building control authority to be able to agree with the applicant an extension to the timescale and the procedural requirements are most suitably provided for in secondary legislation.

Justification for procedure selected

197. Regulations made under this paragraph 1H will be subject to the negative procedure in both Houses of Parliament and, in relation to Wales, Senedd Cymru. Building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and the Government believes that it is appropriate to maintain this procedure for regulations made under clause 32 in order to maintain consistency and because their content will be procedural.

New paragraph 1I of Schedule 1 to the Building Act 1984: "Appeals"

Power conferred on: Secretary of State and Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Negative procedure

Purpose and context

198. The new paragraph 1I of Schedule 1 provides a power for building regulations to make provision for and in connection with appeals in respect of decisions under Parts 1, 2 and 2A of the Building Act 1984. In England, these appeals may be made to the Building Safety Regulator or the First-tier Tribunal; where the appeal was initially to the Building Safety Regulator, there will be a further right of appeal to the First-tier Tribunal against the Building Safety Regulator's decision. In Wales, the regulations may confer a right to appeal to the Welsh Ministers or a magistrates' court, and in case of an appeal to the Welsh Ministers, a right of appeal to a magistrates' court or a right of appeal to the High Court.

199. The regulations will set out the category of decisions that will be appealable. They may make provision for the grounds of appeal, period in which to bring an appeal, the way in which an appeal must be made, and may confer powers on the court, tribunal or other person determining the appeal, including a power to give directions.

200. In relation to appeals to the Building Safety Regulator or Welsh Ministers, building regulations may confer on the Building Safety Regulator and Welsh Ministers powers in respect of costs, and power relating to procedural matters including to decide what kind of procedure to adopt – for example, they might usually consider appeals on the papers, but may sometimes decide to have a hearing.

Justification for delegation

201. This clause enables the Secretary of State and, in relation to Wales, Welsh Ministers to make provision such that persons affected by decisions taken under the Building Act 1984 and building regulations will be able to appeal. In Wales it will also enable provision in connection with the Welsh Ministers appointing a person to determine the appeal.

202. Regulations will set out the category of decisions that will be appealable. Regulations will also make provisions about the grounds, period, manner, and costs of the appeal. The regulations may also set out general procedural matters in regard of the appeal. These provisions are subject to change over time and require procedural flexibility that is not appropriate for primary legislation.

Justification for procedure selected

203. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament or, in relation to Wales, Senedd Cymru. We consider this is appropriate as the provisions will be largely procedural. This is consistent with the existing procedure for building regulations generally, which are made using the negative procedure (see section 1(4) of the Building Act 1984).

Clause 33: Dutyholders and general duties – new paragraph 5A of Schedule 1 to the Building Act 1984: "Appointed persons"

Power conferred on: Secretary of State and Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Negative procedure

Purpose and context

204. This clause will amend Schedule 1 to the Building Act 1984, by the insertion of paragraph 5A, appointed persons, to better identify and hold to account those participating in the design and construction of new buildings, and the refurbishment of existing buildings.

205. Paragraph 5A confers a power to require appointments to be made in relation to any work under building regulations, and to make provisions about the nature of the appointment (including the appointer, the appointee and the term of the appointment).

206. Paragraph 5A also creates a power to make provision for appointments to be treated as made under building regulations (e.g. appointments under the Construction (Design and Management) Regulations 2015 might be treated as having effect as appointments under the Building Regulations).

207. For the ease of reference, the new provisions being inserted into Schedule 1 by this clause and clause 34 are described here as separate items in the following paragraphs but it should be noted they do in fact amend the matters which may be covered in the same single delegated power (section 1 of the Building Act 1984).

Justification for delegation

208. Paragraph 5A recognises that all involved in the commissioning, design, construction, and refurbishment of buildings have duties, responsibilities and functions. We consider it is appropriate to have a delegated power as we are here inserting new provisions into the existing Building Act 1984 regime which relies heavily on building regulations to set out the building control regime. Additionally, the Independent Review stressed the importance of identifying key dutyholders and keeping the regime under review. We consider a delegated power provides some flexibility to make amendments in the future as the regime and operational experience develops and allows us to proactively and reactively amend it, ensuring that the right people can be held to account.

Justification for procedure selected

209. Regulations made under paragraph 5A will be subject to the negative procedure in both Houses of Parliament and, in relation to Wales, in Senedd Cymru. Building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and we consider it is appropriate to maintain this procedure for regulations made under clause 33, in order to maintain consistency. In addition, regulations made under this paragraph will be procedural regulations about how appointments are to be made, and so we consider the negative procedure provides the appropriate level of Parliamentary and Senedd scrutiny.

Clause 33: Dutyholders and general duties – new paragraph 5B of Schedule 1 to the Building Act 1984: "General duties"

Power conferred on: Secretary of State and Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Negative procedure

Purpose and context

210. This clause amends Schedule 1 to the Building Act 1984, by the insertion of paragraph 5B to hold to account those participating in the design and construction of new buildings, and the refurbishment of existing buildings, ensuring that when buildings are designed, constructed or refurbished, all dutyholders, including dutyholders identified in the Construction (Design and Management) Regulations 2015, will have formal responsibilities for compliance with building regulations.

211. Paragraph 5B confers a power to impose duties on relevant persons throughout the design and construction phase of the project. These dutyholders include those commissioning or undertaking work as well as those appointed, controlling or managing the work.

Justification for delegation

212. This clause recognises that all involved in the commissioning, design, construction, and refurbishment of buildings have duties, responsibilities and

functions. We consider it is appropriate to have a delegated power as we are here inserting new provisions into the existing Building Act 1984 regime which relies heavily on building regulations to set out the building control regime. Additionally, the Independent Review stressed the importance of setting rigorous and demanding duties for dutyholders and keeping the regime under review. We consider a delegated power provides flexibility to make amendments in the future as the regime and operational experience develops and allows us to proactively and reactively amend it, ensuring that the duties placed on dutyholders remain fit for purpose and are imposed on the right people.

Justification for procedure selected

213. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament and, in relation to Wales, in Senedd Cymru. Building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and we consider it is appropriate to maintain this procedure for regulations made under clause 33, in order to maintain consistency. Regulations under this paragraph will create operational duties on dutyholders, including duties like cooperating and planning work, which may need to be changed speedily depending on the operational experience of local authorities and, in England, the Building Safety Regulator. The negative procedure allows for this to happen, with the option of a higher degree of scrutiny through a debate if Parliament or the Senedd considers it necessary.

Clause 34: Industry competence – new paragraph 5C of Schedule 1 to the Building Act 1984: "Competence requirements"

Power conferred on: Secretary of State and Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Negative procedure

Purpose and context

214. This clause amends Schedule 1 to the Building Act 1984 by inserting a new paragraph 5C on 'Competence requirements'. Paragraph 5C confers a power to impose in building regulations competence requirements on appointed persons and other prescribed persons. 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 ensures compliance with building regulations.

215. We will use the power to impose competence requirements on the design and build dutyholders (Contractors, Designers, Principal Contractor, Principal Designer) as well as other persons carrying out work. We have detailed these proposals in indicative regulations published alongside this Bill.

Justification for delegation

216. Building regulations currently have minimal provisions relating to how work should be carried out. The intention is to set out more specific requirements in relation to competence. These requirements need to be suitable to the roles and the scope of work they are engaged to carry out, and therefore may need to be updated to reflect future changes to building regulations, or developments in the construction industry.

217. The power also allows for the building regulations to require that where the appointed person is a body (e.g. a company) they must appoint a named individual to manage its functions as an appointed person.

Justification for procedure selected

218. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament and, in relation to Wales, in Senedd Cymru. Building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and we consider it is appropriate to maintain this procedure for regulations made under clause 34, in order to maintain consistency.

219. In addition, we expect that the competence requirements will be technical in nature and do not justify a more detailed level of Parliamentary or Senedd scrutiny.

Clause 35: Lapse of building control approval etc – new sections 32(6) and 53A(6) of, and paragraph 4A(6) of Schedule 4 to the Building Act 1984

Power conferred on: Secretary of State and Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Negative procedure

Purpose and context

220. This clause inserts new sections 32 and 53A into the Building Act 1984 and new paragraph 4A of Schedule 4 to the Building Act 1984 to provide for the automatic lapse of a building control approval, of an initial notice or a public body's notice, and the automatic rescinding of an acceptance of a plans certificate, if work has not commenced after three years.

221. New powers are provided, in new sections 32(6), 53A(6) and paragraph 4A(6) to Schedule 4, for building regulations to set out provision as to when work is to be regarded as having commenced.

Justification for delegation

222. It is important to be clear as to what constitutes commencement of work, and therefore whether a building control approval, initial notice etc remains valid. However, a number of different construction activities may be regarded as the commencement of work. The term will therefore need careful definition and may

require a number of different construction activities to be listed. Providing for this level of detail is not appropriate in primary legislation.

223. Enabling this to be done through secondary legislation provides more flexibility in how activities could be defined, and in particular to make any refinements in the light of experience. It will also allow for consultation on the detail as new regulations are developed.

Justification for procedure selected

224. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament and, in relation to Wales, in Senedd Cymru. We consider this is appropriate as the content of the regulations will be technical in nature and uncontroversial. This procedure is consistent also with the existing procedure for building regulations generally, which are made using the negative procedure (see section 1(4) of the Building Act 1984).

Clause 36: Determination of certain applications by Secretary of State or Welsh Ministers – new section 30A(1), (3), (5), (6), and (9) of the Building Act 1984

Power conferred on: Secretary of State and Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Negative procedure

Purpose and context

225. This clause inserts new section 30A into the Building Act 1984. This provides applicants with the ability to apply to the appropriate national authority for a decision on certain applications relating to work on higher-risk buildings where the building control authority has failed to make a decision on the application within prescribed timescales and there is no agreement between the building control authority and the applicant to extend the timescale. The applications to which this section applies will be set out in building regulations. 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. In Wales failure by the building control authority (the local authority for the area or other local authority 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.

226. A power to make provision about these applications in building regulations is set out in section 30A(5), and provides detail regarding the provision that can be set out in building regulations, covering procedures about making applications under this clause and how they are to be determined, notification requirements, and imposing duties on the building control authority. Provision can also be made to enable the appropriate national authority to appoint a person to determine the application and confer functions on the person appointed. Section 30A(6) clarifies that building regulations may prescribe the

form and content of documents, what needs to accompany them, and how they are given.

Justification for delegation

227. This clause enables building regulations to make provision such that persons affected by the building control authority failing to make a decision on a prescribed application relating to a higher-risk building within prescribed timescales, and failing to agree an extension, have a route to get a decision on their application.

228. Regulations will set out the types of applications that can use this route when there is a non-determination; these applications themselves will be created in secondary legislation and therefore will need to be identified for the purposes of this clause in secondary legislation also. The regulations may also set out general procedural matters in regard of the application. These provisions are subject to change over time and require the ability to set procedural requirements in a timely manner.

Justification for procedure selected

229. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament and, in relation to Wales, Senedd Cymru. Building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and we consider it is appropriate to maintain this procedure for regulations made under this clause, in order to maintain consistency, and because the content of the regulations will be technical and procedural in nature.

Clause 37: Compliance and stop notices

New section 35B(1) and (7) of the Building Act 1984: "Compliance notices"

Power conferred on: Secretary of State and Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Negative procedure

Power conferred on: Building Control Authorities
Power exercised by: Notice
Parliamentary/Senedd procedure: No procedure

Purpose and context

230. This clause inserts new sections 35B, 35C, 35D and 39A into the Building Act 1984. New section 35B provides an additional tool for building control authorities to use in enforcing compliance with building regulations, beyond the existing methods in section 35 of the Building Act 1984 (prosecution for non-compliance with building regulations) and section 36 of the Building Act 1984 (requiring owners to put right non-compliant work).

231. A compliance notice under new section 35B will, for example, be able to require a person who has carried out non-compliant work to rectify it at their own expense; failure to do this could result in either a stop notice (see new section 35C below) or prosecution, with a maximum penalty of an unlimited fine or two years' imprisonment.

232. Section 35B(7)(a) allows the Secretary of State (for England) and Welsh Ministers (for Wales) to prescribe provisions of building regulations in respect of which a compliance notice cannot be given.

Justification for delegation

233. The existing offence of breaching building regulations in section 35 of the Building Act 1984 includes a power to exclude certain provisions of those regulations from criminal liability, which has been used to make Regulation 47 of the Building Regulations 2010.

234. We are making provision here to ensure that there is consistency between the different enforcement provisions – or to make different provision e.g. for specific issues, enabling the use of compliance notices under new section 35B but not prosecution under section 35 or stop notices under new section 35C, if a different approach is justified.

235. Compliance notices are case specific sanctions, exercised on the basis of evidence available to the building control authority, so cannot be provided for through legislation (whether primary or secondary).

Justification for procedure selected

236. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament and, in relation to Wales, in Senedd Cymru. Building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and we consider it is appropriate to maintain this procedure for regulations made under this clause in order to maintain consistency. The content of these regulations is expected to be uncontroversial, as with current regulation 47 of the Building Regulations 2010.

New section 35C(1) of the Building Act 1984: "Stop notices"

Power conferred on: Secretary of State and Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Negative procedure

Power conferred on: Building Control Authorities
Power exercised by: Notice
Parliamentary/Senedd procedure: None

Purpose and context

237. This clause also inserts section 35C into the Building Act 1984. New section 35C provides an additional enforcement tool for building control authorities to use in enforcing compliance with building regulations, beyond the existing methods in section 35 (prosecution for non-compliance with building regulations) and section 36 (requiring owners to put right non-compliant work). A stop notice under new section 35C will require a person to stop work on a site or part of a site until a breach is remedied or steps taken; failure to do this could result in prosecution, with a maximum penalty of an unlimited fine or two years' imprisonment.

238. Section 35C(1)(a) will enable the Secretary of State or, in relation to Wales, Welsh Ministers to specify in regulations certain provisions or requirements of the building regulations under which the building control authority will be able to issue a stop notice without first either issuing a compliance notice or there being a risk of serious harm (as defined in subsection (2)). In England, this power is intended to enable the Building Safety Regulator to stop work immediately on sites where gateway requirements have been breached. The gateway requirements will be set out in building regulations made under new paragraphs 1A and 1B of Schedule 1 to the Building Act 1984, which are inserted by clause 32 of this Bill.

Justification for delegation

239. The power in subsection (1)(a) is necessary to enable the Secretary of State or, in relation to Wales, Welsh Ministers to specify in regulations certain provisions or requirements of the building regulations under which the building control authority will be able to issue a stop notice without first either issuing a compliance notice or there being a risk of serious harm (as defined in subsection (2)). This power is intended to specify the gateway requirements so that the relevant building control authority (Building Safety Regulator in England, local authority in Wales) will have the power to stop work immediately on sites where gateway requirements have been breached. The gateway requirements will be set out in building regulations made under new paragraphs 1A and 1B of Schedule 1 to the Building Act 1984, which are inserted by clause 32 of this Bill.

240. Stop notices are case specific sanctions, exercised on the basis of evidence available to the building control authority, so cannot be provided for through legislation (whether primary or secondary).

Justification for procedure selected

241. Regulations made under this power will be subject to the negative procedure in both Houses of Parliament or, in relation to Wales, the Senedd. Building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and we consider it is appropriate to maintain this procedure for regulations made under this clause, in order to maintain consistency. These regulations will be operational, and the negative procedure provides the opportunity for Parliamentary or Senedd scrutiny through debate if Parliament or the Senedd considers that appropriate, without requiring such scrutiny as a matter of course.

New section 35D(1), (2) and (3) of the Building Act 1984: "Compliance and stop notices: supplementary"

Power conferred on: Secretary of State and Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Negative procedure

Purpose and context

242. New sections 35B and 35C of the Building Act 1984 described above set out new enforcement tools for building control authorities to address and require the rectification of breaches of the building regulations or requirements imposed under building regulations.

243. New section 35D enables the Secretary of State or, in relation to Wales, the Welsh Ministers to make regulations setting out detail around how building control authorities must use compliance notices, including what those notices must specify, how they are given, whether anyone else must be notified, and how they can be amended.

Justification for delegation

244. The regulations that will be made under new section 35D are likely to be detailed and procedural and, in line with similar material in other regimes, we consider it appropriate to set out that detail in secondary legislation. The content of the regulations is likely to be uncontroversial but may need to be amended in the light of experience in operating the new regime. As such, we consider it appropriate to set this material out in secondary rather than primary legislation.

Justification for procedure selected

245. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament or, in relation to Wales, the Senedd. Building regulations are currently subject to the negative resolution procedure (see section1(4) of the Building Act 1984) and we consider it is appropriate to maintain this procedure for regulations made under this clause, in order to maintain consistency. In addition, as described the material is likely to be detailed, extensive and uncontroversial, so we consider that negative procedure provides the appropriate level of Parliamentary or Senedd scrutiny.

New section 39A(6) to the Building Act 1984: "Appeals against compliance notices and stop notices etc"

Power conferred on: the First-tier Tribunal (England), magistrates' court (Wales)
Power exercised by: Direction
Parliamentary/Senedd procedure: None

Purpose and context

246. This power enables the First-tier Tribunal (in England) or a magistrates' court (in Wales), on application, to direct that a stop notice is of no effect, pending the determination of the appeal against the notice.

247. This power is not legislative in character and is therefore mentioned only for information.

Clause 38: Breach of Building Regulations: New section 35(2) and (3) of the Building Act 1984: "Offence of contravening building regulations etc"

Power conferred on: Secretary of State and Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Negative procedure

Purpose and context

248. This clause substitutes a new section 35 into the Building Act 1984. New section 35(2) replicates the existing provision of section 35 that enables the Secretary of State or, in relation to Wales, the Welsh Ministers to make provision that breach of certain building regulations is not a criminal offence.

249. New section 35(3) enables the Secretary of State or, in relation to Wales, the Welsh Ministers to make provision for defences in relation to specific building regulations. In England this is intended for use in connection with the new mandatory occurrence reporting system which dutyholders will be required to establish as part of the new building safety regime.

250. The power created by this new section is intended to be used to create two defences in relation to these duties in secondary legislation:

- A defence to the offence of failure to report where the person being prosecuted was not aware of the occurrence which gave rise to the requirement to report, so long as that person had taken all reasonable steps to be made aware, in sufficient time, of the occurrence. This will place the onus on the Principal Contractor and Principal Designer to take steps to become aware of occurrences happening on site.
- The obligation to report will lie on both the Principal Contractor and Principal Designer. In order to avoid duplicate reports of occurrences, it 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.

251. The power is also intended to be used to set out other new defences in future, if appropriate, in the light of experience of the operation of the mandatory occurrence reporting duties or other aspects of building regulations.

Justification for delegation

252. The power in new section 35(2) to prescribe certain provisions of building regulations so that contravention of those provisions is not an offence exists in the current section 35, which is being replaced by this new section 35, and has been used to make regulation 47 of the Building Regulations 2010, so this power merely replicates the existing position.

253. The power in new section 35(3) to prescribe specific defences to breaches of building regulations is intended in England to enable defences to be set and amended in the light of experience of the operation of the new mandatory occurrence reporting system, and, if appropriate, other aspects of the building regulations. A power to set out or amend defences in secondary legislation will enable those defences to keep pace with developments in the way building regulations operate and make sure that dutyholders are not unduly penalised.

Justification for procedure selected

254. Regulations made under this clause will be subject to the negative procedure in Parliament or, in relation to Wales, the Senedd. Building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and we consider it is appropriate to maintain this procedure for regulations made under new section 35, in order to maintain consistency.

255. We anticipate that regulations made under this power will be uncontroversial and consider the negative procedure is appropriate.

Clause 40: Revocation etc. of certain provision made under section 2(2) of ECA 1972

Power conferred on: Secretary of State and Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Negative procedure

Purpose and context

256. This clause provides powers for building regulations to revoke provision in building regulations which was made using the power in section 2(2) of the European Communities Act 1972. It does this by defining regulations made using powers in both s1 of the Building Act 1984 and s2(2) of the European Communities Act as a ‘combined instrument’ and provides powers for building regulations made under s1 of the Building Act 1984 to revoke provision in a combined instrument. The repeal of s2(2) of the European Communities Act 1972 at the end of the implementation period has resulted in in there being no power to revoke those provisions in existing building regulations which were made under s2(2), as the s1 Building Act 1984 power does not suffice; subsection (2) of this clause fixes this problem by conferring powers to revoke combined instruments.

257. 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, in

particular the Energy Performance of Buildings Directive and Article 8 of the Broadband Cost Reduction Directive.

Justification for delegation

258. Without the ability to revoke the provisions in building regulations made under s2(2), the Government would be constrained in its ability to update and improve the building regulations. There have been a number of amendments to the Building Regulations 2010 in recent years, and the Government will be giving careful consideration to the merits of consolidating them into a single new set of regulations. This is a technical exercise but could not be done in a comprehensive fashion without the ability to revoke the existing regulations in full and replace them with a new set of regulations.

Justification for procedure selected

259. Building Regulations cover technical issues and so are best suited to be made under the negative resolution procedure. The established procedure in section 1(4) of the Building Act 1984 is for changes to building regulations, including the energy efficiency requirements, to be made following the negative resolution procedure. The Government considers it is appropriate to continue to follow that procedure for changes being made, for example to implement the Future Homes Standard or to revoke the existing regulations and replace them with a consolidated set of building regulations.

260. Under paragraph 15 of Schedule 8 to the European Union (Withdrawal) Act 2018, Ministers are required to make a statement as to why provisions made under s2(2) are being revoked or amended before the relevant statutory instrument is laid. This requirement will continue to apply.

Clause 41: Regulation of building control profession

Background

261. This clause amends the Building Act 1984 by inserting a new Part 2A into that Act. The Part includes provisions to create a unified professional and regulatory structure for building control. 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 (to be held by the regulatory authority i.e. the Building Safety Regulator (in England) and Welsh Ministers (in Wales)). Registered building inspectors will be able to provide advice to building control authorities or registered building control approvers, in line with the type of registration they hold. Current Approved Inspectors or other 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.

262. The new Part 2A includes the following delegated powers:

- Sections 58C and 58O – a power for the Secretary of State or, in relation to Wales, Welsh Ministers by regulations, to prescribe how long building inspector and building control approver registrations last and to prescribe other matters which must be included in the public registers.
- Section 58D and 58P– a power for the Building Safety Regulator or, in relation to Wales, Welsh Ministers to specify the manner, form etc of applications for registration as building inspectors.
- Sections 58F, 58H, 58I and 58J– a power for the Building Safety Regulator or, in relation to Wales, Welsh Ministers to issue a code of conduct for registered building inspectors; and a power for the Building Safety Regulator or, in relation to Wales, Welsh Ministers to set the procedure for investigations into inspectors' misconduct and to impose disciplinary orders on inspectors or approvers.
- Sections 58R, 58T, 58U, 58V, 58Z, 58Z1, 58Z2, 58Z3, 58Z4, 58Z5, and 58Z6 – a power for the Building Safety Regulator or, in relation to Wales, Welsh Ministers to issue professional conduct rules for registered building control approvers; set the procedure for investigations for breaches of the rules; impose sanctions for breach of the rules; issue operational standards rules for local authorities and register building control approvers; direct authorities/registered building control approvers to issue reports; set the procedure for investigations for breaches of the rules; and issue improvement notices and serious contravention notices for breach of the rules; and for continuing failure to meet standards and cancel registration of registered building control approvers or recommend the transfer of local authority's building control functions to another authority.
- Sections 58U, 58V, 58Z4, and 58Z5 – a power for the Secretary of State or, in relation to Wales, Welsh Ministers by regulations, to prescribe the cases where the Building Safety Regulator or, in relation to Wales, Welsh Ministers sends a copy of a sanctions decision to every local authority.

<u>New section 58C of the Building Act 1984: "Register of building inspectors"</u>
<u>New section 58O of the Building Act 1984: "Register of building control approvers"</u>

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Negative procedure

<u>Purpose and context</u>

263. Sections 58B to 58D of new Part 2A set out the requirements for the registration of individual building inspectors by the Building Safety Regulator or, in relation to Wales, Welsh Ministers or the body it designates. Sections 58N to 58Q make equivalent provision for registered building control approvers.

264. Sections 58C(5) and 58O(4) provide powers for the Secretary of State or, in relation to Wales, Welsh Ministers to set the length of time registrations are valid. The registration system will be based on validation and revalidation of competence to ensure maintenance of competence is an ongoing process.

265. Sections 58C(6)(i) and 58O(5)(h) also provide powers for the Secretary of State or, in relation to Wales, Welsh Ministers to prescribe any additional matters that the register must record.

Justification for delegation

266. In England we will need to consult with the Building Safety Regulator as part of the operationalisation of the registration process before we make regulations prescribing the duration of registrations which is appropriate. The decision to provide delegated powers in section 58C(5) and 58O(4) instead of on the face of the Bill follows from the conclusion that this should allow for the flexibility for the registration period to be amended quickly if emerging issues show the length of registration needs to be changed. We believe that this appropriate as the decision is primarily procedural and administrative.

267. The principal matters recorded on the two registers are set out on in section 58C(6) and 58O(5) i.e. name and business address, type of work the persons is registered to carry out, conditions attached to the registration, period of registration. We expect the Building Safety Regulator or, in relation to Wales, Welsh Ministers to consult with the sector as part of the operationalisation process. This consultation will enable the Building Safety Regulator (or Welsh Ministers) to ensure the registers are the most useful documents they can be. The decision to provide a reserve delegated power in sections 58C(6)(i) and 58O(5)(h) rather than include all matters on the face of the Bill follows from the conclusion that this allows for the flexibility for additional matters to be required to be recorded on the register if emerging issues demonstrate that is required. We believe that this is appropriate as the decision is primarily procedural and administrative in nature.

Justification for procedure selected

268. The power to prescribe the period for the length of registration is exercised by regulations which are subject to the negative resolution procedure in both Houses of Parliament or, in relation to Wales, in the Senedd. We consider that as the length of a registration is a procedural and administrative matter that this is the appropriate level of scrutiny.

269. The power to prescribe other matters which must be included in the public register is exercised by regulations which are subject to the negative resolution procedure in both Houses of Parliament or, in relation to Wales, in the Senedd. We consider that requiring further matters to be included on the public registers, beyond the list of matters set out in sections 58C(6) and 58O(5), is of an administrative nature and that this is the appropriate level of scrutiny for such a power.

New section 58D of the Building Act 1984: “Application for registration as building inspector”
New section 58P of the Building Act 1984: “Application for registration as building control approver”

Power conferred on: Building Safety Regulator or Welsh Ministers
Power exercised by: procedure, forms etc issued
Parliamentary/Senedd procedure: None

Purpose and context

270. Sections 58B to 58D of the Building Act 1984 set out the requirements for the registration of individual registered building inspectors by the Building Safety Regulator, or the body it designates or, in relation to Wales, Welsh Ministers, or the body they designate (sections 58N to 58Q make equivalent provision for registered building control approvers).

271. Sections 58D and 58P provide powers for the Building Safety Regulator or, in relation to Wales, Welsh Ministers to set out the procedure to be followed and the forms to be used when a person applies for registration as a building inspector or building control approver.

Justification for delegation

272. Under sections 58D and 58P the Building Safety Regulator or, in relation to Wales, Welsh Ministers must set out the procedure and forms for applying to become a registered building inspector or registered building control approver. The decision to provide a delegated power rather than include detailed procedural provisions and the application forms on the face of the Bill or in secondary legislation is because the procedures and forms are likely to be detailed and long, and the Regulator or, in relation to Wales, Welsh Ministers will need the flexibility to amend them in response to circumstances emerging in the sector. We consider this delegation is appropriate as the detailed procedures and application forms are administrative in nature and not sensibly included in legislation.

Justification for procedure selected

273. The power to set out the procedural rules for applications and the application forms themselves is exercised by the Building Safety Regulator or, in relation to Wales, Welsh Ministers publishing a document setting these out. The existing application process for becoming an Approved Inspector under section 49 of the Building Act 1984 does not set out the application forms or the procedures for considering applications in the Act or in secondary legislation. As the procedures for applications and corresponding forms are technical and administrative in nature, we consider it is appropriate for such a power not to be subject to scrutiny in Parliament.

New section 58F of the Building Act 1984: “Code of conduct”
New section 58H of the Building Act 1984: “Professional misconduct investigations”
New sections 58I and 58J of the Building Act 1984: “Sanctions for professional misconduct” and “Interim suspension for suspected serious professional misconduct”

Power conferred on: the Building Safety Regulator or Welsh Ministers
Power exercised by: Code of Practice, misconduct procedures

Parliamentary/Senedd procedure: None

Purpose and context

274. Sections 58F to 58M set out more detail on the ongoing regulation of registered building inspectors, including section 58F which requires that the Building Safety Regulator or, in relation to Wales, Welsh Ministers publish a code of conduct for inspectors. The Building Safety Regulator or, in relation to Wales, Welsh Ministers has the power to seek information from registered building inspectors, and will also be able to take disciplinary action, including varying, suspending or cancelling an inspector's registration. A registered building inspector may appeal a decision to take disciplinary action. Section 58H provides a power for the regulator or, in relation to Wales, Welsh Ministers to set its own procedure for investigations in the case of professional misconduct. Sections 58I and 58J give the Building Safety Regulator or, in relation to Wales, Welsh Ministers the power to impose disciplinary sanctions on registered building inspectors for professional misconduct, including fines, suspension and ultimately cancellation of registration.

Justification for delegation

275. Under section 58F the Building Safety Regulator or, in relation to Wales, Welsh Ministers must publish a code of conduct for registered building inspectors. The code is likely to cover detailed rules on professional conduct for inspectors and it would not be appropriate for these to be set out in legislation. Breach of the code may be a matter which the Building Safety Regulator or, in relation to Wales, Welsh Ministers will wish to investigate. Section 58H provides for the Building Safety Regulator to determine the procedure for investigating misconduct. Sections 58I and 58J provide for the sanction which the Regulator or, in relation to Wales, Welsh Ministers may impose once misconduct is shown to have occurred.

276. The procedures will be set out in a non-legislative document by the Building Safety Regulator or, in relation to Wales, Welsh Ministers as part of its operationalisation process. The code and the procedural rules for investigations are likely to be detailed and long, and the Building Safety Regulator or, in relation to Wales, Welsh Ministers will need to make changes quickly in response to emerging issues. We do not consider it is appropriate to put the code and rules of this nature on the face of the Bill or in secondary legislation as the code of conduct and the investigation procedure are to be primarily administrative as part of the registration regime. In relation to the sanctions for misconduct, in order to ensure misconduct within the profession is dealt with, the Building Safety Regulator or, in relation to Wales, Welsh Ministers needs the power to impose sanctions which are appropriate to the circumstances of the particular case in question. It would not be practicable for sanctions to be imposed on a case-by-case basis via legislation.

Justification for procedure selected

277. The power to set out the code of conduct and the process for investigating misconduct is exercised by the Building Safety Regulator or, in relation to Wales, Welsh Ministers publishing a document setting these out. The sanctions for misconduct will be imposed by the Building Safety Regulator or, in relation to Wales, Welsh Ministers issuing a non-legislative order in each case. We consider that as the code of conduct and the process for investigating misconduct are technical administrative and procedural rules of a very detailed nature, and in relation to the imposition of sanctions, these will be considered and imposed on a case-by-case basis. We consider it is inappropriate for case specific decisions to be subject to scrutiny in Parliament or the Senedd.

New section 58R of the Building Act 1984: "Professional conduct rules"
New section 58T of the Building Act 1984: "Investigations into contraventions of professional conduct rules"
New sections 58U and 58V of the Building Act 1984: "Sanctions for contravention of professional conduct rules" and "Interim suspension for suspected serious contravention"
New section 58Z of the Building Act 1984: "Operational standards rules"
New section 58Z1 of the Building Act 1984: "Reporting requirements"
New section 58Z2 of the Building Act 1984: Information: Wales
New section 58Z3 of the Building Act 1984: "Investigations"
New sections 58Z4, 58Z5 and 58Z6 of the Building Act 1984: "Improvement notice", "Serious contravention notices", "Continuing failure to meet standards: registered building control approvers" and "Continuing failure to meet standards: local authorities in England

Power conferred on: the Building Safety Regulator or Welsh Ministers
Power exercised by: Rules of conduct, operational standards, directions and associated procedures and sanctions
Parliamentary/Senedd procedure: None

Purpose and context

278. Sections 58R to 58X set out more detail on the ongoing regulation of registered building control approvers, including section 58R which requires that the Building Safety Regulator or, in relation to Wales, Welsh Ministers publish a set of registration rules for registered building control approvers – these will cover the prerequisites for continuing to remain as a registered building control approver (such as financial propriety and adequate insurance). Sections 58T, 58U and 58V provide for the Building Safety Regulator or, in relation to Wales, Welsh Ministers to determine the procedure for investigating breaches of the professional conduct rules and allow it to impose sanctions for breaches on registered building control approvers including fines, suspension and ultimately cancellation of registration.

279. Section 58Z gives the Building Safety Regulator or, in relation to Wales, Welsh Ministers the power to set out rules for operational standards and procedures which local authorities and registered building control approvers must follow. Sections 58Z1, 58Z2, 58Z3, 58Z4, 58Z5, and 58Z6 provide for the Building Safety Regulator or, in relation to Wales, Welsh Ministers to determine the

procedure for investigating breaches of the operational standards rules and allow it to impose sanctions for breaches on local authorities and registered building control approvers, including issuing improvement notices and serious contravention notices for breach of the rules, and for continuing failure to meet standards, cancel registration of registered building control approvers or recommend the transfer of local authority's building control functions to another authority.

280. Section 58Z1 provides a power for the Building Safety Regulator or, in relation to Wales, Welsh Ministers to direct local authorities or registered building control approvers to provide reports, and information returns.

281. Section 58Z2 provides a power where the Welsh Ministers are the regulatory authority and require a local authority or registered building control approver to provide information relating to the exercise of their building control functions. Failure to comply with such a request is an offence punishable on summary conviction by a fine.

Justification for delegation

282. Under section 58R the Building Safety Regulator or, in relation to Wales, Welsh Ministers must publish a set of professional conduct rules for registered building control approvers to follow. Under section 58Z the Building Safety Regulator or, in relation to Wales, Welsh Ministers may publish operational standards rules for local authorities and registered building control approvers to follow. Breach of either set of the rules may be a matter which the Building Safety Regulator or, in relation to Wales, Welsh Ministers will wish to investigate.

283. Section 58T provides for the Building Safety Regulator or, in relation to Wales, Welsh Ministers to determine the procedure for investigating breaches of the professional conduct rules, and section 58Z3 gives a similar power in relation to breach of the operational standards rules. The procedures will be set out in a non-legislative document by the Building Safety Regulator or, in relation to Wales, Welsh Ministers as part of its operationalisation process rather than in legislation. The procedural rules for investigations will need to be flexible for the Building Safety Regulator or, in relation to Wales, Welsh Ministers to make changes quickly in response to emerging issues. We consider the investigation procedure to be primarily administrative as part of the registration regime. In relation to the sanctions for breach of the rules (sections 58U, 58V, 58Z4, 58Z5 and 58Z6), the Regulator or, in relation to Wales, Welsh Ministers needs the power to impose sanctions which are appropriate to the circumstances of the particular case in question. It would not be practicable for sanctions to be imposed on a case-by-case basis via legislation.

284. The power for the Building Safety Regulator or, in relation to Wales, Welsh Ministers to direct local authorities and registered building control approvers to make information returns is crucial to the function of an effective oversight regime. Some types of report may be annual or quarterly and others may be more frequent than that.

285. It would be extremely inflexible if the types of reports and when they are required had to be set out in legislation.

Justification for procedure selected

286. We consider that as both the professional conduct rules and the operational standards rules, and the process for investigating breach of them, are technical, operational and procedural, they will be of a very detailed nature and not suitable for inclusion in primary or secondary legislation. In relation to the imposition of sanctions, these will be considered and imposed on a case-by-case basis. We do not consider it is appropriate for case specific decisions to be subject to scrutiny in Parliament or the Senedd.

287. In relation, section 58Z1 providing a direction making power in relation to information reporting allows the Building Safety Regulator or, in relation to Wales, Welsh Ministers to respond flexibly in light of the circumstances.

New section 58U(4), 58V(4), 58Z4(5), and 58Z5(7) of the Building Act 1984: "Sanctions for contravention of professional conduct rules", "Interim suspension for suspected serious contravention", "Improvement notice", "Serious contravention notice" and "Continuing failure to meet standards: local authorities in England" - prescribe cases where a local authority must receive details of sanctions imposed on a registered building control approver.

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Regulations
Parliamentary/Senedd procedure: Negative procedure

Purpose and context

288. Section 58U, 58V, 58Z4 and 58Z5 provide that in prescribed cases the Building Safety Regulator or, in relation to Wales, Welsh Ministers may be required to send a copy of the notice imposing the sanction to all local authorities.

289. For some sanctions, for example if a registered building control approver is suspended for not having adequate professional indemnity insurance, the local authority would have the power to cancel the initial notices submitted by the suspended registered building control approver under Part 2 of the Building Act 1984. But in order to exercise that power the local authority needs to be aware that the registered building control approver has been suspended. Under these sections the Secretary of State or, in relation to Wales, Welsh Ministers has the power, exercised by regulations, to prescribe the cases where the Building Safety Regulator or, in relation to Wales, Welsh Ministers must send a copy of the notice imposing the sanction to all local authorities.

Justification for delegation

290. The new regime for registered building control approvers will be a significant change to the operating regime under Part 2 of the Building Act 1984. In particular, the new transfer procedure will be complex. We wish to consult the

sector before operationalising the regime, we also need the flexibility to set out in secondary legislation the circumstances where it may be necessary for the Building Safety Regulator or, in relation to Wales, Welsh Ministers to notify all local authorities. We do not therefore consider it would be appropriate or practicable to set out now in primary legislation all the cases where the Building Safety Regulator or, in relation to Wales, Welsh Ministers must send a copy of a sanction notice imposed on a registered building control approver to all local authorities.

Justification for procedure selected

291. The power to prescribe the cases when local authorities will be provided notice of the sanctions imposed on registered building control approvers is exercised by regulations which are subject to the negative resolution procedure in both Houses of Parliament or, in relation to Wales, in the Senedd. We consider that as the cases where this requirement on the Building Safety Regulator or, in relation to Wales, Welsh Ministers is to be imposed is mainly administrative in nature this is the appropriate level of scrutiny in Parliament.

Clause 43: Functions exercisable only through, or with advice of, registered building inspectors – new section 46A(1), (2) and (4) of the Building Act 1984: "Building control authorities: restricted activities and functions" and new section 54B(2), (3) and (5) of the Building Act 1984: "Registered building control approvers: restricted activities and functions"

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Negative procedure

Purpose and context

292. This clause amends the Building Act 1984, by inserting two new provisions into that Act (sections 46A and 54B). These sections provide that (1) prescribed activities can only be carried out through a registered building inspector, and (2) prescribed building control functions of the Building Safety Regulator, a registered building control approver or a local authority will only be able to be carried out having first obtained and considered the advice of a registered building inspector. This is to ensure that individuals who have demonstrated the relevant competence and expertise are undertaking specific building control activities and advising decision-makers before important building control decisions are taken. Sections 46A(1) and 54B(2) give the Secretary of State or, in relation to Wales, Welsh Ministers the power, by regulation, to prescribe the activities which only registered building inspectors may undertake. Sections 46A(2) and 54B(3) give the Secretary of State or, in relation to Wales, Welsh Ministers the power, by regulations, to prescribe the functions where the duty to seek advice from a registered building inspector will apply.

293. The new section 46A applies to "restricted activities and functions" exercised by a building control authority (i.e. a local authority or the Building

Safety Regulator). Local authorities have a statutory duty to supervise and enforce building regulations in their area under section 91(2) of the Building Act 1984. For England, sections 91ZA and 91ZB (inserted by clause 31 of the Bill) explain the circumstances where the Building Safety Regulator is the building control authority, in particular where the building is a higher-risk building. In Wales, the local authority will be the building control authority (including for higher-risk buildings, except where the local authority itself is carrying out higher-risk building work in which case the Welsh Ministers have the power to designate a new local authority to be the building control authority for that work). New section 54B applies to "restricted activities and functions" exercised by a registered building control approver. Registered building control approvers may supervise particular building work if they submit an initial notice under Part 2 of the Building Act 1984.

294. It is not intended that all of the work building control authorities or registered building control approvers do under their functions will be specified as restricted activities or functions.

295. We have in mind, in England, that the restricted activities will be the same for building control authorities or registered building control approvers, subject to any variations necessary to secure the specific regulatory model for higher-risk buildings proposed in the Independent Review. The main activity we expect to be specified is building control inspections, however, we propose to specify certain important site inspections and not necessarily all site inspections. We may also want to specify formally assessing plans as compliant with the building regulations or other activities that are particularly important during a building project. We will ensure in England that the relevant regulations enable the Building Safety Regulator to implement the style of regulation set out in the Independent Review, involving Health and Safety Executive, building control and Fire and Rescue Service expertise being brought together to make critical regulatory decisions in respect of higher-risk buildings.

296. We have in mind in England that a local authority's functions equivalent to those of a registered building control approver for building work, and not its functions of checking the initial notices etc of registered building control approvers (currently known as Approved Inspectors), will be specified.

297. In England, 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 plans and issuing completion certificates.

298. In England, examples of local authority functions that are unlikely to be included in the list of functions are accepting and rejecting initial notices from private registered building control approvers, accepting or rejecting plans certificates from such bodies and accepting or rejecting amendment notices from such bodies.

299. In England, examples of Building Safety Regulator functions that could be restricted in secondary legislation may include approving building control applications at the proposed new Gateways two and three.

Justification for delegation

300. Restricting specified building control activities of registered building control approvers and local authorities so they may only be carried out by registered building inspectors is a substantial change to the Building Act 1984 and to how the sector currently operates.

301. Before we define the specified activities that only a registered building inspector can carry out, we want to consult with the sector. We also need flexibility to amend those activities as there may be changes in the sector or emerging issues that we cannot currently predict. Consequently, we do not consider it would be appropriate to specify the list of restricted activities in primary legislation.

302. Similarly requiring registered building control approvers and local authorities to obtain and consider advice from a registered building inspector before making some of their building control decisions is a substantial change to the Building Act 1984 and to how the sector currently operates.

303. Before we define the specified functions for which a registered building control approver or a local authority must obtain and consider the advice of a registered building inspector before making decisions, we want to consult with the sector. We also need flexibility to amend those specified functions as there may be changes in the sector or emerging issues that we cannot currently predict. Consequently, we do not consider it would be appropriate to specify the restricted functions in primary legislation.

304. In England in relation to the Building Safety Regulator, the Government intends to require specific building control procedures to be followed under the building regulations in respect of building control for higher-risk buildings.

305. The Government further intends that the Building Safety Regulator, when acting as the building control authority, will take professional building control advice before making crucial regulatory decisions on higher-risk buildings.

306. But it is not possible to identify the precise functions now as many of them will be in secondary legislation yet to be made. Following the making of those building regulations in respect of higher-risk buildings, this delegated power enables the Government to prescribe that the crucial building control decisions on higher-risk buildings must be taken only after the Building Safety Regulator has obtained and considered registered building inspector advice. Consequently, we do not consider it would be appropriate to specify the functions in primary legislation.

Justification for procedure selected

307. The power to prescribe the functions to which the duty to obtain and consider advice from a registered building inspector is exercised by regulations which are subject to the negative resolution procedure in both Houses of Parliament or, in relation to Wales, the Senedd. The new requirement will be part of the procedural rules in the existing building control process in building regulations (which are subject to the negative procedure) and we consider requiring a building control authority or a registered building control approver to obtain professional advice before making building control decisions is part of that process and as a procedural matter we consider the negative resolution procedure is the appropriate level of scrutiny.

Clause 45: Higher-risk building work: registered building control approvers – new section 52A(1), (2) and (4) of the Building Act 1984: "Cancellation of initial notice when work becomes higher-risk building work"

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary / *Senedd procedure: Negative procedure*

Purpose and context

308. This clause amends the Building Act 1984, removing the ability for persons carrying out any building work on higher-risk buildings, and any work for the construction of higher-risk buildings or works which result in an existing building becoming a higher-risk building, to be able to choose their own building control body.

309. Specifically, the clause inserts a new section 52A into the Building Act 1984, concerning the "cancellation of initial notice when work becomes higher-risk building work". When an initial notice is in force, but it appears to either the registered building control approver, the person carrying out the work or the local authority that some or all of the work has become higher-risk building work, they must cancel the relevant part of the initial notice. Section 52A(1), (2) and (4) includes a number of powers under which the Secretary of State or, in relation to Wales, the Welsh Ministers can, by regulations, set out the format and content of the cancellation notice.

Justification for delegation

310. Part 2 of the Building Act 1984 already makes a number of provisions for forms to be in a prescribed form and this new power is following that precedent. The form to cancel some or all of an initial notice will contain detailed information. We do not consider it would be appropriate for this level of detail to be included in primary legislation.

Justification for procedure selected

311. The power to prescribe the form of the cancellation notice is exercised by regulations which are subject to the negative resolution procedure in both Houses

of Parliament or, in relation to Wales, the Senedd. The new requirement is part of the existing building control process in Part 2 of the Building Act 1984 (under which building regulations are subject to the negative procedure) and we consider it is technical and procedural matter for which we consider the negative resolution procedure is the appropriate level of scrutiny.

Clause 45: Higher-risk building work: registered building control approvers – new section 55(2C)(c)(i) of the Building Act 1984: "Appeals"

Power conferred on: Secretary of State *or Welsh Ministers*
Power exercised by: Regulations (Statutory Instrument)
Parliamentary / *Senedd procedure: Negative procedure*

Purpose and context

312. This clause amends section 55 of the Building Act 1984. When a local authority cancels an initial notice because it has determined some or all of the work is higher-risk building work, the person shown in the initial notice as the person carrying out the work, or the registered building control approver, may appeal to the appropriate court or tribunal.

313. When the court or tribunal determines that the relevant part of an initial notice was not properly cancelled, a new initial notice relating to unfinished work may be submitted to the local authority in specific circumstances, as outlined in new section 55(2C).

314. The new section 55(2C)(c)(i) requires the registered building control approver and the person carrying out the work to submit a new initial notice (if they choose to submit a new initial notice) to the local authority within the period of seven days beginning with the day on which the appeal is determined or such other period as may be prescribed.

315. These provisions will give the Secretary of State, or in relation to Wales, the Welsh Ministers, the power to prescribe a different period in building regulations other than the period specified in section 55(2C)(c)(i).

Justification for delegation

316. The appeals process in this circumstance is entirely new. The prescribed period is set out to give a reasonable time for the registered building control approver and the person carrying out the work to submit a new initial notice. These periods are there to set legislative controls to reduce the risk to building safety where there has been a change in building control. The Secretary of State or, in relation to Wales, the Welsh Ministers needs the flexibility to prescribe other periods as, for example, there may be a need to set different periods for particular types of buildings due to complexities of the construction of the building, rather than specifying the period in primary legislation.

Justification for procedure selected

317. The power to make regulations under these provisions is subject to the negative resolution procedure in both Houses of Parliament or, in relation to Wales, Senedd Cymru.

318. The power to specify the time period which will apply to submitting a new initial notice is administrative and procedural. We consider the negative procedure is appropriate level of scrutiny for provisions of this nature.

Clause 46: Higher-risk building work: public bodies – new section 54A(1) of the Building Act 1984: "Public bodies and higher-risk building work"

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary / Senedd procedure: Affirmative procedure

Purpose and context

319. This clause amends the Building Act 1984 by inserting a new section 54A. It gives the Secretary of State or, in relation to Wales, the Welsh Ministers the power through regulations to amend sections 5 and 54 of, and Schedule 4 to, the Building Act 1984, to create a bespoke regime for higher-risk buildings for bodies using public bodies notices including to prevent a public body[6] 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.

320. Historically, the provisions in the Building Act 1984 covering public body notices allowed public bodies to carry out supervision of their own building control work. However, the power in section 54 has not been utilised, and currently the Secretary of State or, in relation to Wales, the Welsh Ministers has not approved an organisation under this power.

321. There could be a conflict of interest if a public body was to supervise their own higher-risk building work, and/or have the power not to notify the relevant building control authority of compliance.

Justification for delegation

322. In response to the Independent Review's recommendations, we are removing the ability for persons carrying out the work to choose the building control body to provide regulatory oversight for higher-risk building work. Therefore, we will use this power to prevent bodies using public bodies notices from being able to supervise their own building work for higher-risk buildings.

[6] A public body for this purpose is a body (corporate or unincorporated that acts under an enactment for public purposes and for its own profit and is of a description that is approved by the Secretary of State in accordance with building regulations.

323. Currently more work needs to be done to engage with the sector before creating a new regime in relation to bodies using public bodies notices and it is not therefore possible to include detailed provisions in the primary legislation.

324. This power is subject to the affirmative procedure, and therefore will be subject to agreement from both Houses of Parliament.

Justification for procedure selected

325. Regulations made under this power will be subject to affirmative resolution in both Houses of Parliament or, in relation to Wales, the Senedd. This is a Henry VIII power which could be used to make significant changes to sections 5 and 54 of, and Schedule 4 to, the Building Act 1984 in providing how they will apply in relation to higher-risk buildings for bodies using public bodies notices. We consider that it is important that Parliament (or the Senedd) should have the opportunity to debate proposals of this nature and consequently have provided for the power to be subject to the affirmative procedure.

Clause 47: Insurance – amendments to section 47(6), (6B) and (6C) of the Building Act 1984

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Designation and guidance
Parliamentary / Senedd procedure: None

Purpose and context

326. This clause amends section 47 of the Building Act 1984 and allows for the Secretary of State or, in relation to Wales, the Welsh Ministers to designate bodies to approve insurance schemes and the publication of guidance as to the adequacy of insurance schemes, subject to consultation with the Secretary of State or, in relation to Wales, the Welsh Ministers.

327. Current legislation allows for the Secretary of State or, in relation to Wales, the Welsh Ministers to approve insurance schemes that appear to secure the provision of adequate insurance for work undertaken by approved inspectors (to be renamed as registered building control approvers by the Bill).

Justification for delegation

328. The clause allows the Secretary of State or, in relation to Wales, the Welsh Ministers to designate bodies to undertake the approval of insurance schemes and to issue relevant guidance subject to approval.

329. We need the right expertise to advise the Secretary of State or, in relation to Wales, the Welsh Ministers on insurance matters, and we propose to conduct an open and fair selection process before designating this body. It would not be appropriate to include the name of the (likely private sector) body in

primary or secondary legislation as it may change as the designation may be reappointed from time to time.

Justification for procedure selected

330. We consider that the designation of a body and the publication of insurance guidance as to adequacy are technical and operational matters which will be of a very detailed nature which are not suitable for inclusion in primary or secondary legislation.

Clause 48: Plans Certificates – amendments of section 50(1A)(d), (1D) and (7A) of, and paragraph 2(1A)(d) and (1D) and (7) of Schedule 4 to, the Building Act 1984

Power conferred on: Secretary of State and Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary / Senedd procedure: Negative Procedure

Purpose and context

331. This clause amends section 50 of, and Schedule 4 to, the Building Act 1984 to make provision about plans certificates. In 2020 the Government consulted on improving the procedures in relation to plans certificates. This clause is part of the response to that consultation.

332. New section 50(1A) to (1C) provides that, if a person intending to carry out the work requests, a plans certificate must be issued if certain conditions are met. These are that: a registered building control approver has inspected the full plans or such plans as are sufficient for the purposes of issuing a plans certificate for the work plans; the plans are not defective; the registered building control approver is satisfied that the work if carried out in accordance with the plans, will comply with building regulations' requirements; and that prescribed consultation requirements have been met.

333. A registered building control approver might issue a plans certificate on the basis that the plans are sufficient for a plans certificate to be issued but require further plans to be provided as details of the work are developed. This is provided for under new section 50(1A)(a)(ii). New section 50(7A)(c) provides for building regulations to set out the further details of the further plans which the registered building control approver has yet to check.

334. New section 50(1D) provides that a plans certificate must be issued in a prescribed form.

335. New section 50(7A) sets out that building regulations may prescribe the circumstances in which plans certificate must be issued; the effect of not doing so, for example that the initial notice will ceases to have effect; and 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.

336. This clause also amends Schedule 4 to the Building Act 1984 to make similar provision for a public body's notice plans certificate.

Justification for delegation

337. We consider that there are circumstances where plans certificates must be issued, for example, for work being carried out on buildings subject to the Regulatory Reform (Fire Safety) Order 2005. However, these circumstances, and the effects if a plans certificate is not issued, will need to be defined carefully, and in detail, and may need to be changed over time, so we consider it is best done through secondary legislation.

338. The form in which any further plans needed are to be provided, the form in which plans certificates should be issued to local authorities, and the detail of consultation arrangements, are administrative matters for which the technical details also are best set out in secondary, rather than primary legislation. This will allow for consultation on those details and also allow requirements to be adapted in the light of experience.

339. Existing section 50 of, and Schedule 4 to, the Building Act 1984 already enables building regulations to make provision for the form in which plans certificates should be submitted. Provision is made in the Building (Approved Inspectors etc) Regulations 2010. Requirements for consultation with fire and rescue authorities and sewerage undertakers before, or as soon as practicable after, a plans certificate is issued are set out in Regulations 12 and 13 of those regulations. We consider it would be consistent with the existing regime for the technical further details for plans certificates also to be in secondary legislation.

Justification for procedure selected

340. Regulations made under section 50 and Schedule 4 will be subject to the negative procedure as provisions are technical and procedural relating to the administration of plans certificates and need to be integrated with other provisions in the existing the building regulations related to plans certificates. This procedure is consistent with the existing procedure for building regulations (see Section 1(4) of the Building Act 1984). We consider the negative procedure is the appropriate level of scrutiny for these technical and procedural matters.

Clause 49: Cancellation of initial notice – amendment to section 52(1), (3), (5A), (5B) and (7) of the Building Act 1984

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary / *Senedd procedure: Negative procedure*

Purpose and context

341. This clause amends section 52 of the Building Act 1984, to create new powers and obligations for local authorities, registered building control approvers and persons carrying out work to cancel initial notices. An initial notice is a notice which a registered building control approver (and the client) submit to the local authority specifying the work and, if accepted, the initial notice has the effect of making the registered building control approver the building control body for the work instead of the local authority.

342. Section 52 already provides some grounds under which persons can, and in some cases must, cancel the initial notice e.g. where the registered building control approver is unable to carry out the supervision work.

343. This clause includes a power for the Secretary of State or, in relation to Wales, the Welsh Ministers to prescribe through regulations, following the negative procedure, the form of the notice and the additional circumstances where an initial notice must be cancelled by a registered building control approver (new section 52(1)(f)), a local authority (new section 52(5B)(e)) or the person carrying out or intending to carry out the work (new section 52(3)(b)).

344. Subsection (6) of clause 49 also inserts new subsection (7) into section 52. This creates new obligations for local authorities, where they propose to cancel an initial notice under grounds of subsection (5A), to give seven days' notice to the registered building control approver. A power is given to the Secretary of State or, in relation to Wales, the Welsh Ministers to prescribe the form of this notice in regulations.

Justification for delegation

345. The power to prescribe new circumstances where an initial notice must be cancelled has been introduced to provide flexibility in the legislation for unforeseen circumstances that may become apparent in the future and enable the reversion of works to another registered building control approver or local authority.

346. The power to prescribe the form of the notices to be given is a detailed administrative and procedural provision that is not appropriate to include in primary legislation. The Secretary of State or, in relation to Wales, the Welsh Ministers needs the flexibility to prescribe the information to be provided in the cancellation notice. All other certificates and notices provided for under Part 2 of the Building Act 1984 are prescribed under regulations.

Justification for procedure selected

347. The power to prescribe forms and the additional circumstances are subject to the negative resolution procedure in both Houses of Parliament or, in relation to Wales, the Senedd. This is part of the procedural and administrative rules relation to the processes under Part 2 of the Building Act 1984 set out in building regulations which are currently subject to the negative procedure. Consequently, as the new provisions will be included within the existing building

control regime we consider it is appropriate for this matter to be subject to scrutiny under the negative procedure.

Clause 50: New initial notices

New section 53(7)(a) of the Building Act 1984: "New initial notice: prescribed circumstances"

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary / *Senedd procedure: Negative procedure*

Purpose and context

348. Under the current regime, if an Approved Inspector (under the new regime referred to as a registered building control approver) is unable to undertake their role, they must cancel the initial notice and their work reverts to the local authority automatically. In some circumstances (such as a firm becoming insolvent) these automatic unplanned transfers to the local authority can cause disruptions to clients and local authorities. Similar circumstances could arise in the new regime.

349. Consequently, in order to resolve these issues clause 50 amends the Building Act 1984. These provisions create a new process that allow the person(s) carrying out any work to appoint a new registered building control approver to take over the building works instead of the work automatically reverting to supervision of the local authority. Section 53(7) provides that a new initial notice may be given in, and in certain cases the process set out in sections 53B to 53E must be followed.

350. The new section 53(7) gives the Secretary of State or, in relation to Wales, the Welsh Ministers a reserve power, through regulations, to prescribe additional circumstances (in addition to those listed on the face of the Bill) where a new initial notice may be given.

Justification for delegation

351. The transfer process is entirely new. The Secretary of State or, in relation to Wales, the Welsh Ministers needs this reserve power to give the flexibility to prescribe circumstances in addition to the ones listed in the Bill, in order to respond to how the regime develops over time. Without this reserve power it would only be possible to add to the circumstances through amending the primary legislation. The power would be used following consultation with the sector.

Justification for procedure selected

352. The power to make regulations under this provision is subject to the negative resolution procedure in both Houses of Parliament or, in relation to

Wales, the Senedd. The power will set out any additional circumstances where a new initial notice may be given. This is a reserve power. We consider the negative procedure is appropriate level of scrutiny for technical provisions of this nature.

New section 53(12) of the Building Act 1984: "New initial notice: guidance"

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Guidance
Parliamentary / Senedd procedure: None

Purpose and context

353. This clause amends section 53 of the Building Act 1984. Under the current regime if an Approved Inspector (under the new regime referred to as a registered building control approver) is unable to undertake their role, their work reverts to supervision of the local authority automatically. In some circumstances (such as a firm becoming insolvent) these automatic unplanned transfers to the local authority can cause disruptions to clients and local authorities. Similar circumstances could arise in the new regime.

354. These provisions create a new process that allow the person(s) carrying out any work to appoint a new registered building control approver to take over the building works. Section 53(12) gives the Secretary of State or, in relation to Wales, the Welsh Ministers the power to issue guidance about the new process.

Justification for delegation

355. The clause allows the Secretary of State or, in relation to Wales, the Welsh Ministers to issue guidance in relation to the new transfer process to assist the smooth operation of that regime. As the process is a new one, we consider it is important for guidance to be issued and for persons involved to have regard to the guidance. The guidance will contain technical details of how the procedures will operate in practice and as such it is not appropriate for that detail to be in primary or secondary legislation.

Justification for procedure selected

356. We consider that the publication of guidance as to operational and procedural matters which will be of a very detailed nature and it is appropriate for these issues not to be subject to Parliamentary or Senedd procedures.

New section 53B(5) and (7) of the Building Act 1984: "New initial notice: change of registered building control approver"

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary / *Senedd procedure: Negative procedure*

Purpose and context

357. Under the current regime, if an Approved Inspector (under the new regime referred to as a registered building control approver) is unable to undertake their role, their work reverts to the local authority automatically. In some circumstances (such as a firm becoming insolvent) these automatic unplanned transfers to the local authority can cause disruptions to clients and local authorities. Similar circumstances could arise in the new regime.

358. These provisions create a new process that allow the person(s) carrying out any work to appoint a new registered building control approver to take over the building works.

359. The new section 53B(5) gives the Secretary of State or, in relation to Wales, the Welsh Ministers the power, through regulations, to prescribe the information which the transfer certificate must contain.

Justification for delegation

360. The transfer process is entirely new. The Secretary of State or, in relation to Wales, the Welsh Ministers needs the flexibility to prescribe the information to be provided in the transfer certificate. The form and content of existing certificates and notices which are provided under Part 2 of the Building Act 1984 are currently prescribed under building regulations. We do not consider it would be appropriate to put the detailed content of a certificate in primary legislation. The power to change the time periods in the transfer process is included to give flexibility when operationalising the process following consultation with the sector.

Justification for procedure selected

361. The power to make regulations under this provision is subject to the negative resolution procedure in both Houses of Parliament or, in relation to Wales, the Senedd. The power will set out the administrative and procedural details for the transfer from one register building controller to another e.g. in the event of the original registered building control approver becoming insolvent.

362. The power to specify the time periods which apply to the transfer certificate and accompanying documents and the information to be included in a transfer certificate is administrative and procedural. We consider the negative procedure is appropriate level of scrutiny for provisions of this nature.

New initial notice: prescribed time periods specified under sections 53(8)(a), 53B(7) and 53C(4), (5) and (6) of the Building Act 1984

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary / *Senedd procedure: Negative procedure*

Purpose and context

363. Under the current regime, if an Approved Inspector (under the new regime these will be referred to as a registered building control approver) is unable to undertake their role, their work reverts to the local authority automatically. In some circumstances (such as a firm becoming insolvent) these automatic unplanned transfers to the local authority can cause disruptions to clients and local authorities. Similar circumstances could arise in the new regime.

364. These provisions create a new process that allow the person(s) carrying out any work to appoint a new registered building control approver to take over the building works.

365. The new section 53(8) requires the registered building control approver and the person carrying out the work to submit a new initial notice to the local authority within the period of seven days beginning with the day on which the original initial notice was cancelled, or such other period as may be prescribed. The new section 53B requires the registered building control approver and the person carrying out the work to submit a transfer certificate and accompanying documents within specified periods to the local authority (e.g. 21 days to accept or reject a transfer certificate) and section 53B(7) gives the Secretary of State a power, by regulations to change these specified periods.

366. The new sections 53C(4), (5) and (6) specify that during the period of 21 days beginning with the day on which the transfer certificate and transfer report is given to the local authority, or such other period as may be prescribed, the local authority may, by notice, require the registered building control approver provide information as specified in the notice.

367. These provisions will give the Secretary of State or, in relation to Wales, the Welsh Ministers the power, through regulations to prescribe a different period in building regulations other than the periods specified in section 53(8), 53B(7) and 53C(4), (5) and (6).

Justification for delegation

368. The transfer process is entirely new. The prescribed periods are set out to give a reasonable time for the registered building control approver and the person carrying out the work to submit a new initial notice. These periods are there to set legislative controls to reduce the risk to building safety where there has been a change or loss in building control. The Secretary of State or, in relation to Wales, the Welsh Ministers needs the flexibility to prescribe other periods as there may be a need to prescribe periods for particular types of buildings due to complexities of the construction of the building, rather than specifying the period in primary legislation.

Justification for procedure selected

369. The power to make regulations under these provisions is subject to the negative resolution procedure in both Houses of Parliament or, in relation to Wales, the Senedd. The powers will set out the administrative and procedural

details, namely the time period, for the transfer from one register building controller to another e.g. in the event of the original registered building control approver becoming insolvent.

370. The powers to specify the time periods which apply to submitting a new initial notice, the transfer certificate and accompanying documents and the information to be included in a transfer certificate are administrative and procedural. We consider the negative procedure is appropriate level of scrutiny for provisions of this nature.

New initial notices – new section 53C(3), (4), (5) and (6) of the Building Act 1984: "Consideration of transfer certifi*cate and report" – prescribed grounds*

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary / *Senedd procedure: Negative procedure*

Purpose and context

371. Under the current regime, if an Approved Inspector (under the new regime referred to as a registered building control approver) is unable to undertake their role, their work reverts to the local authority automatically. In some circumstances (such as firm becoming insolvent) these automatic unplanned transfers to the local authority can cause disruptions to clients and local authorities. Similar circumstances could arise in the new regime.

372. These provisions create a new process that allow the person(s) carrying out any work to appoint a new registered building control approver to take over building control.

373. The new section 53C gives the Secretary of State or, in relation to Wales, the Welsh Ministers the power, through regulations, to prescribe grounds on which a local authority may reject a transfer certificate which is submitted by a registered building control approver (and its client).

Justification for delegation

374. The transfer process is entirely new. The Secretary of State or, in relation to Wales, the Welsh Ministers needs the flexibility to prescribe the grounds for rejection of a new initial notice under new section 53B. All existing grounds for rejection for certificates and notices in this Part of the Building Act 1984 are prescribed under building regulations and not set out in the primary legislation. We consider it is appropriate to take a consistent approach within the same regime.

Justification for procedure selected

375. The power to make regulations under this provision is subject to the negative resolution procedure in both Houses of Parliament or, in relation to Wales, the Senedd. The power will set out the details of the circumstances in

which a local authority can reject a transfer certificate submitted by a registered building control approver. The power to specify these circumstances is administrative and procedural. Examples of current grounds include, whether the person currently an Approved Inspector, and whether the person has a certificate showing they have insurance. We consider the negative procedure is appropriate level of scrutiny for provisions of this nature.

New initial notice – new section 53D(2) and (3) of the Building Act 1984: "Cancellation of initial notice: change of registered building control approver"

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary / *Senedd procedure: Negative procedure*

Purpose and context

376. Under the current regime if an Approved Inspector (under the new regime referred to as a registered building control approver) is unable to undertake their role. The registered building control approver and the person carrying out the work, or intending to carry out the work, shall cancel the initial notice.

377. The local authority does not have the power to cancel the initial notice except under limited grounds.

378. This new section 53D provides that where the transfer process applies i.e. an initial notice is cancelled, for example, because a registered building control approver has their registration suspended and a new initial notice is submitted for the work, the local authority has the power to cancel the new initial notice when the transfer certificate and report is rejected.

379. The new section 53D(2) and (3) gives the Secretary of State or, in relation to Wales, the Welsh Ministers the power, through regulations, to prescribe the form of the cancellation notices.

Justification for delegation

380. The Secretary of State or, in relation to Wales, the Welsh Ministers needs the flexibility to prescribe the information to be provided in the cancellation notice. All existing certificates and notices under Part 2 of the Building Act 1984 are prescribed under regulations. We consider it is appropriate to take a consistent approach within the same regime. It is not appropriate to included detailed provisions setting out the content of these procedural notices in primary legislation.

Justification for procedure selected

381. The power to make regulations under this provision is subject to the negative resolution procedure in both Houses of Parliament or, in relation to Wales, the Senedd. The power will set out the format and content of a

cancellation form. The power is administrative and procedural. We consider the negative procedure is appropriate level of scrutiny for provisions of this nature.

New initial notice – new section 53D(5) of the Building Act 1984: "Cancellation of initial notice: new circumstances"

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary / *Senedd procedure: Negative procedure*

Purpose and context

382. Under the current regime, if an Approved Inspector (under the new regime referred to as a registered building control approver) is unable to undertake their role the registered building control approver and the person carrying out the work, or intending to carry out the work, shall cancel the initial notice. The local authority does not have the power to cancel the initial notice except under limited grounds.

383. This new section 53D provides that where the transfer process applies i.e. an initial notice is cancelled, for example, because a registered building control approver has their registration suspended and a new initial notice is submitted for the work, the local authority has the power to cancel the new initial notice when the transfer certificate and report is rejected.

384. The new section 53D(5) provides that where a transfer certificate and report have been rejected no further initial notice may be given in relation to the work and supervision of the work would revert to the local authority. However, section 53D(5) gives the Secretary of State or, in relation to Wales, the Welsh Ministers the power, through regulations, to prescribe cases where a further initial notice may be issued after such a cancellation. This is a reserve power.

Justification for delegation

385. The Secretary of State or, in relation to Wales, the Welsh Ministers needs this reserve power to provide the flexibility to prescribe the cases where it may be necessary to allow a developer to submit a further new initial notice after having been through the transfer process unsuccessfully once already. This is a new process and it is not yet known whether it will be necessary to set out any cases where a further attempt at a transfer should be allowed. We are currently minded to allow only one attempt at a transfer but this reserve power would allow the Secretary of State or, in relation to Wales, the Welsh Ministers, in prescribed cases to allow further attempts at a transfer to another approver. The power to add further circumstances would be used following consultation with the sector.

Justification for procedure selected

386. The power to make regulations under this provision is subject to the negative resolution procedure in both Houses of Parliament or, in relation to

Wales, the Senedd. The power, if used, will set out the circumstances where a further new initial notice may be given after a failed transfer. This is a reserve power. We consider the negative procedure is appropriate level of scrutiny for technical provisions of this nature.

Clause 51: Information gathering – new section 53(4B) and (4C) of the Building Act 1984

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary / *Senedd procedure: Negative procedure*

Purpose and context

387. This clause amends the Building Act 1984 by amending sections 53 and 57. It ensures that if a registered building control approver ceases to be involved in a project, its records of supervision of a building work can be made available.

388. The clause inserts subsections (4A) to (4D) into section 53 of the Building Act 1984. When a person is required to give such information under subsection (4A) or (4C), this information must be given within a certain time period, which is to be defined in secondary legislation as per subsection (4B). Subsection (4C) requires the registered building control approver to provide information to the local authority and the person who is carrying out or intending to carry out the work within a prescribed period.

Justification for delegation

389. We are prescribing the time period in regulations so we can consult with industry about the appropriate timescales to hand over project information. Due to the complexities of works undertaken by registered building control approvers, it would be more appropriate to seek views across the whole market on what is a reasonable time period to hand over information and consequently it is not possible to specify this period in the primary legislation.

Justification for procedure selected

390. The power to prescribe the time limit is exercised by regulations which are subject to the negative resolution procedure in both Houses of Parliament or, in relation to Wales, the Senedd. The new requirements are part of the existing building control process in Part 2 of the Building Act 1984 and we consider it is technical and procedural matter for which we consider the negative resolution procedure is the appropriate level of scrutiny.

Clause 52: Information

New section 56A of the Building Act 1984: “Giving information by electronic means: England”

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

391. The Building Act 1984 requires persons carrying out the work, registered building control approvers or the local authority to use prescribed forms when undertaking activities specified in Part 2 of the Building Act 1984.

392. Section 56 of the Building Act 1984 requires local authorities to record these notices, certificates and other documentation regarding these activities in a local register. These systems are localised and are held for each local authority, which can mean they are not easily accessible. Many registers are kept in paper form making it difficult to utilise the information.

393. This clause amends the Building Act 1984 and creates a new requirement in England for the Building Safety Regulator to hold this information and places obligations for specified persons to be required to use the facility to submit information. This power also enables the Secretary of State, by regulations, to require or authorise specified persons to submit information through other means such as physical documents.

394. This modernises the way information on registered building control approvers' activities is held, assists the Building Safety Regulator in carrying out their oversight function of building control and reduces the risk to building safety by having a record of information including decisions and completions for works.

395. By having a central repository in electronic form this ensures that vital and key safety information is maintained and accessible.

Justification for delegation

396. Including the power by regulations to define the cases where a specified person may be required or authorised otherwise than through the facility would enable us to consult on the appropriate use of these powers. The electronic facility will need to be created, therefore it is not possible to foresee technologically what information will in practice be able to be submitted via it and it is not therefore possible to set these out in primary legislation. Currently many documents, including building plans, tend to be submitted in paper form.

397. The facility will be digital by default, but we would also need a power to make regulations to provide for circumstances where persons may not be able to use digital means.

398. We are also using regulations to specify relevant information for specified people as further work is required detailing the required use of prescribed forms and documents.

Justification for procedure selected

399. The power to make regulations under this provision is subject to the negative resolution procedure in both Houses of Parliament. The power requires persons to use the electronic facility rather than submitting notices etc in paper form to their local authority. The power is part of the technical and procedural rules relating to the building control process under Part 2 of the Building Act 1984. We consider the negative procedure is appropriate level of scrutiny for provisions of this nature.

New section 56B of the Building Act 1984: "Requirement to keep register: England"

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

400. The Building Act 1984 requires the persons carrying out the work, the registered building control approver or the local authority to use prescribed forms when undertaking activities specified in Part 2 of the Building Act 1984.

401. Section 56 of the Building Act 1984 requires local authorities to record these notices, certificates and other documentation regarding these activities in a local register. These systems are localised and are held for each local authority which are not easily accessible. Many registers are kept in paper form making it difficult to utilise the information.

402. This clause amends the Building Act 1984 and creates a new requirement for the Building Safety Regulator to hold this information on a national register.

403. This modernises the way information on registered building control approvers' activities is held, enabling the Building Safety Regulator to carry out its oversight function of building control and reduces the risk to building safety by having a record of information including decisions and completions for works.

404. The power allows the Secretary of State to specify what information the Building Safety Regulator must keep on the register and what specified information is available to the public (the electronic facility provided for by new section 56A will likely include documentation that might not be included on the public 'register' part of the facility).

Justification for delegation

405. It would not be appropriate to include in the primary legislation details of the information to be held on the register as the information will depend on the new provisions set out in the Bill some of which will be in secondary legislation yet to be made.

Justification for procedure selected

406. The power to make regulations under this provision is subject to the negative resolution procedure in both Houses of Parliament. The power will set out the types of documents to be included and the administrative details for the public register – opening times, etc. The power is mainly administrative and procedural. We consider the negative procedure is appropriate level of scrutiny for provisions of this nature.

New section 56C of the Building Act 1984: "Delegation of functions"

Power conferred on: Building Safety Regulator
Power exercised by: Delegation
Parliamentary procedure: None

Purpose and context

407. This clause amends the Building Act 1984, by inserting a new section 56C which allows the Building Safety Regulator to delegate its functions of setting up an electronic portal and setting up a national register (under sections 56A and 56B) to another body.

408. The power to delegate allows the Building Safety Regulator to contract with another body (such as one that has experience of running an electronic portal or a national register) to deliver these functions.

Justification for delegation

409. The ability to delegate to another body (whilst retaining the legal responsibility for the functions) gives the Building Safety Regulator flexibility to buy in technological etc experience and expertise for third parties. It would not be appropriate for the name of the body to be set out in legislation as this may change from time to time.

Justification for procedure selected

410. The power to delegate is for administrative convenience. The Building Safety Regulator will remain legally responsible for the exercise of these functions. Consequently, we do not consider it is necessary for Parliament to scrutinise the day to day administration of how the Building Safety Regulator administers these operations.

New section 55(4) of the Building Act 1984: "(Appeals)"

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

411. This clause amends section 55 of the Building Act 1984, it creates an obligation in England for the local authority on an appeal under subsection (1) or (3), to send specified information to the Building Safety Regulator for inclusion on the national register.

412. This information is needed to keep the national register up to date. Registered building control approvers can appeal certain decisions under Part 2 of the Building Act 1984 and the validity of their notices will depend on the outcome of these decisions. In order to ensure the validity of particular notices on the national register as up to date, the Building Safety Regulator needs to be informed as to the outcome of cases as soon as possible.

Justification for delegation

413. We are using regulations to specify relevant information as further work is required detailing the information required that would be of use to the Building Safety Regulator. We do not consider it would be appropriate in primary legislation to include detailed provisions as to the types of information about appeal decisions which must be sent to the Building Safety Regulator. We consider it is appropriate for these detailed technical and procedural provisions to be included in regulations.

Justification for procedure selected

414. The power to make regulations under this provision is subject to the negative resolution procedure in both Houses of Parliament. The power will set out the administrative details for a local authority sharing information about appeal decisions with the Building Safety Regulator for inclusions in the national register. The power is administrative and procedural. We consider the negative procedure is the appropriate level of scrutiny for provisions of this nature.

Clause 53: Functions under Part 3 of Building Act 1984 – new section 90A(1), (2) and (3) of the Building Act 1984: "Functions under this Part: the regulator etc"

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure

Purpose and context

415. Part 3 of the Building Act 1984 places a number of functions on local authorities in relation to buildings, including powers to issue notices requiring building owners to take action in respect of various health and safety matters; defective, dilapidated and dangerous buildings; and demolitions of buildings.

416. This clause inserts new section 90A into the Building Act 1984. Section 90A(1) provides powers for the Secretary of State, by regulations, to allocate responsibilities in respect of these functions between building control authorities, i.e. the Building Safety Regulator and local authorities, in England. We may, for

example, use this power to allocate some Part 3 functions to the Building Safety Regulator in respect of higher-risk buildings.

417. Subsections (2) and (3) allow for notification requirements to be imposed on the Building Safety Regulator and/or local authorities. We expect that we will use this power to require that, where the local authority retains the function in respect of higher-risk buildings, it must notify the Building Safety Regulator before taking action, and vice versa.

418. By virtue of new section 120A of the Building Act, regulations made using this power may make consequential amendments to the Building Act; for example, some of the specific provisions in Part 3 will need to be amended if the Building Safety Regulator is allocated functions, and the regulations will be subject to the affirmative procedure (see new section 120A in schedule 5).

Justification for delegation

419. Part 3 of the Building Act 1984 will continue to apply to higher-risk (as other) buildings. The Government is concerned to avoid duplicated regulation where the local authority can take action under Part 3 on safety issues which will also be subject to the safety case regime. However, some of the functions in Part 3 relate closely to other local authority responsibilities e.g. under environmental health legislation and the Housing Act 2004.

420. Therefore, careful consideration needs to be given, including consultation with local authorities as to whether and, if so, how, Part 3 functions should be allocated. Providing a power to make changes in secondary legislation will allow for this.

421. Part 3 of the Act includes provision for local authorities to issue notices to building owners to take action on specified health and safety matters and in relation to the demolition of buildings, and to take action in relation to defective, dilapidated or dangerous buildings. These provisions in the Act will need to be amended to provide the Building Safety Regulator with the same powers if it is allocated responsibilities for functions under Part 3, hence the power provided by virtue of section 120A for regulations to make consequential amendments to the Building Act 1984.

422. Also, it is possible that changes may need to be made over time to refine how these functions are allocated, in the light of experience with operating the new safety regime for higher-risk buildings, and secondary legislation provides the flexibility to do this in a timely manner.

Justification for procedure selected

423. As the effect of the exercise of these powers may involve removing functions from local authorities or allocating functions jointly to the Building Safety Regulator and local authorities, the Government considers it appropriate that they should be subject to the affirmative procedure in both Houses of Parliament.

Clause 54: Minor and consequential amendments - Schedule 5: Minor and consequential amendments in connection with Part 3

Paragraph 9(8): amendments to section 6 of the Building Act 1984

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Order (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

424. This paragraph amends the existing powers in section 6 of the Building Act 1984, dealing with the approval or withdrawal of approval of documents for the purposes of building regulations. Under section 6 the Secretary of State or, in relation to Wales, the Welsh Ministers may designate a body for the purposes of approving documents giving guidance about building regulations, by way of making an order.

425. This provision inserts new subsection (9) into section 6 of the Building Act 1984. This new subsection clarifies the power to designate by making clear that an order may designate a body only in relation to certain types or buildings, or only in relation to certain types of work, or only in relation to certain provisions of building regulations.

Justification for delegation

426. This provision clarifies the existing order-making power to make clear that bodies can be designated to produce only some types of guidance, not necessarily all guidance. This is an amendment to clarify an existing delegated power; we consider it is appropriate to leave the existing delegated power in place.

Justification for procedure selected

427. The existing order-making power, which we are clarifying, is subject to the negative procedure.

Paragraph 11(4): amendments to section 8 of the Building Act 1984

Power conferred on: the Building Safety Regulator
Power exercised by: Direction
Parliamentary procedure: None, but section 10 of the Building Act 1984 imposes other procedural safeguards

Purpose and context

428. Section 8(2) of the Building Act 1984 provides for building regulations to enable local authorities to exercise the power provided to the Secretary of State in section 8(1), on application, to dispense with or relax a requirement of building

regulations it they consider its operation to be unreasonable in a particular case. Section 8(4) enables for building regulations to provide that a requirement in the regulations can be dispensed with or relaxed by a public body if that body considers the operation of the requirement to be unreasonable. The power in section 8(2) has been used to make regulation 11 of the Building Regulations 2010.

429. Paragraph 11(4) of Schedule 5 inserts a new section 8(3A) into the Building Act 1984 to provide in England that for work for which the Building Safety Regulator is the building control authority, it can, on application, dispense with or relax a requirement if it considers the operation of that requirement to be unreasonable. New section 8(3A) therefore provides the Building Safety Regulator with the same power to dispense with or relax a requirement as is available to a local authority.

Justification for delegation

430. Applications for dispensations and relaxations need to be considered on a case by case basis and decisions will be dependent on the circumstances of the building, the building work being undertaken, the particular building regulations requirement and the risks involved. Judgments in particular cases are best made by the body responsible for checking compliance and enforcing the building regulations. As noted above, this power is already exercisable by local authorities and therefore new section 8(3A) is consistent with existing law. It would not be appropriate for case specific decisions to be set out in legislation.

Justification for procedure selected

431. As applications for dispensations and relaxations will be dealt with on a case-by-case basis, it would not be possible to prescribe them in legislation. The decisions are likely to be highly technical and specific to the particular circumstances. This power is already exercisable by local authorities without Parliamentary oversight and therefore new section 8(3A) is merely extending the existing law to cover the Building Safety Regulator. For these reasons, we consider that it is appropriate to have no Parliamentary procedure for the use of this power. However, there are a number of safeguards on the use of the power in section 10 of the Building Act 1984.

Paragraphs 41 and 43**:** new sections 47(3A) and 51A(5A) of the Building Act 1984 - prescribed circumstances

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary / *Senedd procedure: Negative procedure*

Purpose and context

432. Under section 47 of the Building Act 1984 the procedure for submitting an initial notice (and under section 51A an amendment notice) provides that if the local authority who receives it does not decide to accept or reject it within a

specified period (currently 5 days) the notice is deemed to be accepted. The amendment gives the Secretary of State or, in relation to Wales, the Welsh Ministers the power, by regulations, to disapply this acceptance in prescribed cases.

Justification for delegation

433. There are a number of amendments to the procedures for submitting notices under Part 2 of the Building Act 1984 including switching off the ability of developers of higher-risk buildings from using Approved Inspectors, suspending registered building control approvers and allowing developers to transfer to a new registered building control approver where the original registered building control approver is no longer able to carry out the supervision.

434. The new regime will be more complicated than the current Part 2. For example, the transfer process could take a number of weeks to complete. There are likely to be some circumstances, such as where there is a transfer to another registered building control approver, where the procedural rule deeming acceptance will not be appropriate under the new regime. The power allows the Secretary of State or, in relation to Wales, the Welsh Ministers to consider those circumstances, consult on them with the sector and make regulations where necessary.

Justification for procedure selected

435. The power is for the Secretary of State or, in relation to Wales, the Welsh Ministers to make provisions as to the procedures for initial notices and amendment notices and as such it is considered appropriate for the procedure to negative resolution procedure in both Houses of Parliament or, in relation to Wales, the Senedd, this aligns with existing procedural rules for notices under Part 2 of the Building Act 1984 which are also subject to the negative resolution procedure.

Paragraph 48(2): amendment to section 57 of the Building Act 1984

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary / Senedd procedure: Negative procedure

Purpose and context

436. This is a minor amendment consequential on the repeal of section 16 and paragraph 4A of Schedule 1 of the Building Act 1984.

437. Section 57 creates an offence of deliberately or recklessly giving notices and certificates which contain false or misleading information. The current provision covers certificates given under section 16(9) and paragraph 4A of Schedule 1. We are repealing both of these provisions and replacing them with clearer and simpler certificate-giving powers under new paragraphs 1A and 1C of Schedule 1.

Justification for delegation

438. This delegated power allows us to designate the appropriate provisions of building regulations in respect of which this offence will apply, so that we can specify the particular certificates and notices described in the regulations in respect of which it is an offence if they contain false or misleading information. This should lead to greater clarity as the regulations themselves will make clear that the offence applies, as compared to the current position in which someone reading the regulations may not be aware of the provisions of section 57.

Justification for procedure selected

439. This is a simple designation power, to identify the notices and certificates subject to the offence in section 57. We do not expect that it will be controversial, and we consider that the negative procedure provides the appropriate degree of Parliamentary scrutiny.

Paragraph 55: amendments to section 91A of the Building Act 1984

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

440. Section 91A of the Building Act 1984 contains a power which may be used to require local authorities to set up registers to hold prescribed information and documents. The information and documents to be held on registers; the manner in which, and the time periods for which, information should be held on the registers are to be prescribed in building regulations.

441. The power in section 91A applies in both England and Wales already; the amendment made by this paragraph merely extends the existing delegated power in section 91A so that it can be used in England in respect of the Building Safety Regulator as well as local authorities, so that the Building Safety Regulator can be required to keep registers where appropriate. The information to be held on registers by the Building Safety Regulator, and the arrangements for doing so, will be prescribed in building regulations.

Justification for delegation

442. The types of information to be held and the arrangements for holding registers will need to be set out in detail which is most appropriate to be done in secondary legislation. This amendment merely extends the existing delegated power in section 91A so that it can be used in respect of the Building Safety Regulator as well as local authorities, so that the Building Safety Regulator can be required to keep registers where appropriate.

Justification for procedure selected

443. Regulations made under this power will contain detailed administrative provisions relating to the keeping of registers, and as such the Government considers that the negative procedure provides the appropriate level of Parliamentary scrutiny. Building regulations are already subject to the negative procedure (section 1(4) of the Building Act 1984) so adopting that procedure will be consistent with that existing practice.

Paragraph 56: new section 91B(7) of the Building Act 1984: "Cooperation etc and the sharing of information:Wales"

Power conferred on: Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Senedd procedure: Negative procedure

Purpose and context

444. New Section 91B in paragraph 56 creates a requirement for cooperation between local authorities, fire and rescue authorities and fire inspectors in Wales in the exercise of statutory functions specified in section 91B(1). It also creates reciprocal information sharing in relation to wider functions, listed in subsection (7); and further cooperation and information sharing promises relating to the Welsh Ministers.

445. The duties to cooperate and power to share information are designed to foster a culture of joint working between relevant bodies operating in the same regulatory landscape, to support one other to discharge their statutory functions effectively.

446. The delegated power in section 91B(7) enables the Welsh Ministers to add to the list of local authority and fire and rescue functions in connection with which those bodies must cooperate with the Welsh Ministers and in connection with which those bodies are able to share information.

Justification for delegation

447. The delegated power in section 91B(7) allows the Welsh Ministers by regulations to add to that list of local authority and fire and rescue functions in relation to information sharing is permitted (and in relation to which cooperation with Welsh Ministers is required). This reflects that there are a particularly wide range of potential operational interactions between these bodies. The Welsh Ministers do not believe that they can foresee all of the local authority and fire and rescue authority functions where operational experience would demonstrate that information sharing would support effective delivery of those agencies' statutory functions.

448. In addition, there may be changes to the remit or operational practice of these bodies over time, which could lead to different functions becoming relevant. This power provides the flexibility to ensure that local authorities and fire and

rescue authorities can share relevant information that would assist with the delivery of their functions.

Justification for procedure selected

449. The power to prescribe additional relevant functions in section 91B(7) will be a power to prescribe in building regulations and will be subject to the negative procedure in Senedd Cymru. Regulations made using this power will identify those operational matters of local authorities and fire and rescue authorities which interact within the new building safety regime. We consider that the choice of negative procedure provides the appropriate level of scrutiny.

Paragraph 76(3)(b) and (c): amendment to section 120 of the Building Act 1984

See the entry for paragraph 82, below.

Paragraph 77: new section 120A of the Building Act 1984: "Regulations"

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Affirmative and Negative

Purpose and context

450. New section 120A of the Building Act 1984 sets out general provisions in relation to regulations made under the new or amended sections of the Act listed, rather than this being repeated in each of the relevant sections. The relevant sections of the Act are: section 54A; 55; 56A; 56B; 90A; 91A; 92; 105B; 105C; 120D; 120I and 125A.

451. Section 120A(2) provides that regulations made under these sections may make consequential, supplementary, incidental, transitional, or saving provision and different provision for different purposes or for different areas. Section 120A(3) enables regulations to describe a building by reference to various characteristics. Section 120A(4) and (5) provides that regulations made under new sections 54A and 90A of the Act may make consequential amendments to the Building Act 1984. Sections 120A(6) - (10) set out which regulations will use the affirmative resolution procedure in the Houses of Parliament or, in relation to Wales, Senedd Cymru and which will use the negative resolution procedure.

Justification for delegation

452. The justification for the relevant delegated power is set out in the section of this memorandum covering the clause of the Bill in question.

Justification for procedure selected

453. The justification for the procedure selected for the relevant delegated power is set out in the section of this memorandum covering the clause of the Bill which provides the power.

Paragraph 80: new section 125A(1) and (2) of the Building Act 1984: "Meaning of Work"

Power conferred on: Secretary of State and Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Affirmative and Negative Procedure

Purpose and context

454. New section 125A(1) clarifies that when the term "work" is used in the Parts of the Building Act 1984 listed in new section 125A(3) it will include a material change of use as defined in building regulations, apart from excluded sections which are those not listed in new section 125A(3)(a). This 'gloss' on the term 'work' already appears in a number of places in the Building Act 1984 (see, for example, section 58(2), which ensures that 'work' includes 'material change of use for the whole of Part 2; see also section 5(4), section 44(10)). Therefore section 125A(1) consolidates these existing glosses (which will be repealed as a consequence) and extends them to a few additional and new provisions in the Building Act 1984, other than those not listed in section125A(3), for consistency.

455. New section 125A(2) provides that regulations may also set out that the term work when used in the sections of the Building Act 1984 set out in new section 125A(3) may include such other matters as are specified in regulations. This is because there may be circumstances where the Building Act 1984 and building regulations should apply but which may not be considered to fall within a common understanding of the term work, for example, because physical work may not be involved. An example might be where a building was a listed building, and therefore may have been exempt from building regulations' requirements on energy efficiency, but is delisted and so should no longer benefit from the exemption. It is necessary to have the power to capture situations such as these in building regulations. As such, this reserve power may be used in future to add to the definition of 'work'.

Justification for delegation

456. There is already a power in the Building Act 1984 to define 'material change of use' (see paragraph 8(1)(e) of Schedule 1 to the Building Act 1984); the power in subsection (1) of section 125A replaces this existing power.

457. It will not be possible to identify in advance all of the circumstances in which it may be appropriate to add to the definition of 'work', so a power to so through secondary legislation is necessary. This will also allow for full consultation on any changes proposed to be made to the definition.

Justification for procedure selected

458. Regulations made under section 125A(1) to define material change of use are technical in nature and we consider it is appropriate they are subject to the negative procedure, which is already the case for the existing power to define 'material change of use' in building regulations which section 125A(1) replaces.

459. Regulations made under the power in new section 125A(2) will be subject to the affirmative procedure. As regulations made using this power may affect the scope of the Building Act 1984 we consider it appropriate that they use the affirmative procedure to ensure full scrutiny by the Houses of Parliament and, in relation to Wales, Senedd Cymru.

Paragraph 82: amendment to section 134 of the Building Act 1984

Power conferred on: Secretary of State or Welsh Ministers
Power exercisable by: Order (statutory instrument)
Parliamentary Procedure: None

Purpose and context

460. Section 134 of the Building Act 1984 is the power for the Secretary of State to bring into force provisions of that Act by commencement order. Some provisions within the Act remain uncommenced. It is recognised as appropriate, in the context of the Building Safety Bill and the provisions for Wales contained within that Bill, and the devolution of executive and legislative competence relating to buildings, that the Welsh Ministers should have power to commence certain uncommenced provisions of the Building Act 1984. The amendments made to section 120 of the Building Act 1984 by paragraph 76(3)(b) and(c) of Schedule 5 are consequential to this amendment, and enable Welsh Ministers to exercise the same powers as the Secretary of State when commencing provisions (e.g. to make transitional and savings provisions).

Justification for delegation

461. It is appropriate that the Welsh Ministers have the power to commence the uncommenced provisions of the Building Act 1984, in relation to Wales, subject to the exceptions specified in new section 134(1B).

Justification for procedure selected

462. It is usual for commencement powers not to be subject to any procedure.

Paragraph 83: amendments to Schedule 1 to the Building Act 1984

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

463. Schedule 1 to the Building Act 1984 provides powers for building regulations to be made to cover matters set out in the Schedule. This paragraph contains minor amendments to the Schedule consequential to powers being provided elsewhere in the Bill for building regulations to be made, which will replace or amend powers provided by the provisions in Schedule 1.

Justification for delegation

464. The matters covered in Schedule 1 require detailed technical or procedural provision to be made, which is best done through secondary legislation, as in current building regulations.

Justification for procedure selected

465. This paragraph contains minor amendments to existing powers in Schedule 1 to the Building Act 1984, which are already subject to the negative procedure.

Clause 55: Appeals - Schedule 6: Appeals and other determinations

Paragraph 7: New section 43A(2) of the Building Act 1984

Power conferred on: the Building Safety Regulator, the First-tier Tribunal
Power exercised by: Direction
Parliamentary procedure: None

Purpose and context

466. This power enables the Building Safety Regulator and the First-tier Tribunal, when determining certain appeals, to give directions to give effect to their determination.

467. This new section applies to an appeal under section 20(5) (materials unsuitable for permanent building), section 39 (relaxations) or section 50(2) (plans certificate) of the Building Act 1984. For example, the First-tier Tribunal might direct a building control authority to grant a relaxation.

468. NB: This power is not legislative in character and is therefore mentioned only for information.

Paragraph 30: new section 101A of the Building Act 1984: “Appeal: refusal to consider application etc on ground is higher-risk building work”

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Negative procedure

Purpose and context

469. This clause inserts new section 101A into the Building Act 1984. The new section includes a power for the Secretary of State or, in relation to Wales, the Welsh Ministers, by building regulations, to set out the procedure for making appeals to the appropriate national authority in the circumstances described in subsection (1).

470. The power may, in particular, be used to set out how a person gives notice of appeal, require an appellant to notify the local authority when they appeal, place duties on the local authority when an appeal is made and allow the appropriate national authority to appoint a person to determine the appeal.

Justification for delegation

471. The detailed provisions as to the procedures for making an appeal are technical and administrative in nature and therefore not appropriate to be included in the primary legislation. Consequently, we consider it is appropriate for the Secretary of State and, in relation to Wales, Welsh Ministers to have power to set out these detailed provisions in regulations.

472. The detailed provisions may change over time and the ability to set procedural requirements in a timely manner is required.

Justification for procedure selected

473. The power to make these provisions in regulations is subject to the negative procedure in both Houses of Parliament or Senedd Cymru. The power will set out details on appealing a local authority's decision in the circumstances set out in subsection (1). These types of provisions are administrative and procedural in nature. Furthermore, use of the negative procedure is consistent with other building regulations: see section 1(4) of the Building Act 1984. We consider the negative procedure is the appropriate level of scrutiny for provisions of this nature.

Clause 56: Fees and charges – new section 105B of the Building Act 1984: "Fees and charges"

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary/Senedd procedure: Negative procedure

Purpose and context

474. Currently 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 levy charges in connection with the exercise of their functions under building regulations and for charges to be fixed in schemes and determined in accordance with principles set out in building regulations. These powers have been used to make the Building (Local Authority Charges) Regulations 2010.

475. New section 105B extends these powers so that regulations can be made to enable fees and charges to be levied by the Building Safety Regulator, local authorities and Welsh Ministers in connection with the exercise of their functions under the Building Act 1984 and regulations made under it. The power allows for regulations to prescribe the levels of fees and charges and to make provision 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.

476. Paragraphs 5 and 9 of Schedule 1 will be repealed as a consequence of new section 105B (see paragraph 80 of Schedule 5 to this Bill).

Justification for delegation

477. Levels of fees and charges are administrative and will need to be changed regularly (e.g. to reflect changes to inflation rates) which it would be difficult to do if they were set in primary legislation. The current Building (Local Authority Charges) Regulations 2010, prescribe the functions for which charges can be levied by local authorities ('chargeable activities'). Regulations made under this power will replace those regulations. Chargeable activities may change over time and secondary legislation enables the list of chargeable activities to be amended over time, to reflect new circumstances. Enabling the principles to govern schemes to be set out in regulations also makes it easier to adapt these in line with any changes in the way in which public authorities should set fees and charges, consistent with the principles of Managing Public Money (in England) and Managing Welsh Public Money.

478. The Building Safety Regulator will have a significant number of functions under the Building Act 1984 and regulations made under it, including acting as building control authority for higher-risk buildings and certain other buildings, and overseeing the performance and competence of building control professionals.

479. The Independent Review recommended that the new regulatory authority 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 (e.g. applications for registration as a registered building inspector).

Justification for procedure selected

480. Regulations made under this power will be subject to negative procedure. They will set the arrangements under which charging schemes must operate and fees and charges are set, so will be largely administrative and procedural in nature. Use of the negative procedure is consistent also with the process for the current Charges Regulations. We consider that the use of the negative procedure provides an appropriate degree of scrutiny in Parliament or, in relation to Wales, in the Senedd, with the option of a debate should Parliament or the Senedd consider it necessary, for administrative regulations of this kind.

Clause 57: Levy on applications for building control approval in respect of higher-risk buildings – new s105C of the Building Act 1984: "Levy on applications for building control approval in respect of higher-risk buildings"

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure

Purpose and context

481. The Secretary of State on 10 February 2021 announced that a levy will be introduced as part of the Building Safety Bill. The Secretary of State confirmed that the levy will be targeted at developers and only apply when they seek permission to develop certain high-rise buildings in England. This clause gives the Secretary of State powers to impose a levy on developers and make regulations as to the amount of the levy, who has to pay the levy, when the levy is paid, provision of information necessary to administer the levy, consequences of failure to pay and disputes.

Justification for delegation

482. The design and delivery of the levy, e.g. setting amounts that must be paid (and when), which developments/developers are excluded from levy charges, and the detailed administrative arrangements for the levy, may need to be varied with time. This would not be practicable by primary legislation.

483. Enabling the principles to administer the levy to be set out in regulations also makes it easier to adapt these in line with any changes in the way in which public authorities should set fees and charges, consistent with the principles of Managing Public Money (in England).

Justification for procedure selected

484. Regulations using these powers will be subject to affirmative resolution as the Government recognises the need for Parliament to scrutinise regulations imposing a levy on industry closely.

Clause 59(1): Meaning of "building safety risk"

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure

Purpose and context

485. The more stringent regulatory regime will regulate buildings in occupation by reference to building safety risks. These are the risks that

dutyholders will manage via the Safety Case Report. This clause sets out that spread of fire and structural failure are the main building safety risks. However, the clause allows for other risks to the safety of persons in or about a building arising from the building to be added by prescribing them in regulations subject to the affirmative resolution procedure in both Houses of Parliament, after consulting with the Building Safety Regulator and appropriate persons.

Justification for delegation

486. Whilst the new regime is focused on the risks of fire spread and structural failure due to the potentially catastrophic nature of such incidents and the scope set by the Independent Review, in the future, evidence may emerge of other significant risks that have the potential to affect the safety of people in or about higher-risk buildings to the same extent. We cannot predict what risks these might be and consequently have taken a power to prescribe new risks in secondary legislation. The Secretary of State must consult with the Building Safety Regulator and appropriate persons before prescribing a new risk. The Secretary of State can also take forward recommendations by the Building Safety Regulator to define new building safety risks by the same procedure.

Justification for procedure selected

487. Regulations made under this power will be subject to an affirmative resolution procedure in both Houses of Parliament. If exercised, this power would specify a new type of risk (in addition to fire spread and structural failure) which dutyholders must consider as part of their duties when considering the safety of people in or about higher-risk buildings. Residents and owners would also have to consider the new type of risks as part of their duties. Consequently, it is considered appropriate that the use of the power should be subject to the scrutiny of debates and approvals in both Houses of Parliament.

Clause 62(2), (3), (4) and (5): Meaning of "higher-risk building"

Clause 62(3)(c) of the Building Safety Bill: "Meaning of "higher-risk building" etc"

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure

Purpose and context

488. This clause defines a higher-risk building for the purposes of Part 4 of this Act as a building in England that is at least 18 metres in height or has at least 7 storeys and has at least two residential units. The clause includes a power to specify in regulations the description of those buildings which are excluded from the definition of 'higher-risk buildings' for the purposes of Part 4 of the Bill, and therefore which buildings will not be subject to the more stringent occupation regulatory regime. When making regulations the Secretary of State can describe buildings by size, design, use, purpose, or other characteristics. The government

proposes to use the power in clause 62(3)(c) to exclude prisons, hotels and buildings occupied solely for the purposes of the armed forces from being treated as higher-risk buildings. We have detailed these proposals in indicative regulations published alongside this Bill. The power in clause 62 allows the scope of the regime to remain flexible and the definition of 'higher-risk buildings' can be amended in line with evidence or experience of the operating regime.

489. The power in clause 62(3)(c) is subject to the affirmative resolution procedure in both Houses of Parliament.

Justification for delegation

490. The Independent Review was clear that the Government should have the ability to quickly respond to newly identified building safety risks in different types of buildings. We could achieve this by changing the definition of 'higher-risk building' to take these new buildings into account.

491. This clause will therefore enable the Secretary of State to make regulations to amend the description of buildings which are excluded from the definition of 'higher-risk building'. Before making regulations which add a description of building to the definition of 'higher-risk building', the Secretary of State must receive a recommendation or advice from the Building Safety Regulator, consult other appropriate persons and undertake and publish a cost benefit analysis. If the Secretary of State uses this power to make regulations which have another effect, for example to add a new description of building to the list of those excluded, they must consult the Building Safety Regulator (unless they have already received advice or a recommendation from the Regulator) and other appropriate persons beforehand.

Justification for procedure selected

492. Regulations made under this power will be subject to affirmative resolution procedure in both Houses of Parliament. This power allows the Secretary of State to describe which types of buildings will be excluded from the definition of higher-risk buildings and therefore affects which buildings are subject to the more stringent regulatory regime imposed by Part 4 of this Act. It is considered that the use of the power will be of significant interest to Parliament and therefore should be subject to the scrutiny of debates and approvals in both Houses of Parliament.

Clause 62(2), (3)(a), (3)(b) and (4) of the Building Safety Bill: "Meaning of "higher-risk building""

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

493. The clause includes a power in clause 62(2) to make regulations to supplement the provisions in clause 62 to support the definition of higher-risk building. This includes the power to define what amounts to a building or a storey ((3)(a) and (4)) and how the height of a building is measured ((3)(b)).

494. Subsection (4) specifies that a range of other structures, erections and movable objects could be defined as a "building". This is similar to the provision made in section 121 of the Building Act 1984 and aligns with the equivalent clause in Part 3 of the Building Safety Bill (clause 30, section 120D). The Building Safety Regulator has general building safety and standards duties under clause 5 of the Building Safety Bill. Clause 29(3) provides that this duty could cover other structures, erections or movable objects, though we do not currently propose to use it. If the power under 29(3) is used in the future, then intelligence from undertaking the duty in clause 5 could result in the Regulator making a recommendation to alter the definition of building given in regulations made under this power.

495. We intend to use the power to provide for a building to include any structure or erection, for below-ground storeys to be ignored when counting the number of storeys in a building and for a mezzanine whose floor area is more than half of the floor area of the largest storey to count as a separate storey. We have detailed these proposals in indicative regulations published alongside this Bill.

496. Apart from when it is used in relation to the exclusion of buildings by virtue of subsection (3)(c) (as to which see above), the power at subsection (2) is subject to the negative resolution procedure in both Houses of Parliament. Before regulations can be made the Secretary of State must consult the Building Safety Regulator and other appropriate persons.

Justification for delegation

497. Following pre-legislative scrutiny, the Housing, Communities and Local Government Committee recommended defining 'higher-risk buildings' in the Bill. We have responded to that recommendation by providing for much of the definition to be set out on the face of the Bill. The definition of 'higher-risk buildings' in the Bill includes terms (such as "storey") whose definitions are principally technical. It is considered that further explaining these terms is more suited to regulations. For example, we have left to regulations how a building is defined (this aligns with the approach in the Building Act 1984), and whether some storeys should be excluded when counting the number of storeys in a building (e.g. the storeys below ground).

498. Before making regulations under this power, clause 63 provides that the Secretary of State must consult the regulator, unless the regulator has already provided a recommendation or advice, and any other persons the Secretary of State considers appropriate.

Justification for procedure selected

499. Apart from when it is used in relation to the exclusion of buildings by virtue of subsection of (3)(c), regulations made under this power will be subject to negative resolution procedure in both Houses of Parliament. This power includes provision to supplement principally technical definitions. And as such we consider the negative resolution procedure is appropriate for such regulations and provides sufficient scrutiny of regulations made under this power.

Clause 62(5) of the Building Safety Bill: "Meaning of "higher-risk building""

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure

Purpose and context

500. The clause includes a power to amend the clause, apart from subsections (2) and (5). This Henry VIII power could be used to amend the height requirement or the use criteria of two or more residential units which are on the face of the Bill and thereby amend the definition of higher-risk buildings and so change those buildings which are subject to the more stringent regulatory regime in Part 4 of the Bill. This power allows the scope of the regime to remain flexible and the definition of 'higher-risk buildings' to be amended in line with evidence or experience of the operating regime. The Independent Review stated: "*it will be important to ensure that government can respond quickly in the future, where necessary, to broaden this definition in light of either critical new information emerging (e.g. through incident reporting or whistle-blowing) or experience of operating the new regime."*

501. The power in section 62(5) is subject to the affirmative resolution procedure.

Justification for delegation

502. The Independent Review was clear that the Government should have the ability to quickly respond to newly identified building safety risks in different types of buildings, and subsequently change the definition of 'higher-risk buildings' to take these buildings into account.

503. This power will therefore enable the Secretary of State to make regulations to amend the definition of buildings which are to be 'higher-risk buildings'. Before making regulations which add a description of building to the definition of 'higher-risk building', the Secretary of State must receive a recommendation or advice from the Building Safety Regulator, consult other appropriate persons and undertake and publish a cost benefit analysis. If the Secretary of State uses this power to make regulations which have another effect, they must consult the Building Safety Regulator (unless they have already received advice or a recommendation) and other appropriate persons beforehand.

504. Following pre-legislative scrutiny, the Housing, Communities and Local Government Committee recommended defining 'higher-risk buildings' in the Bill. We have done this but, consequently, this power is required to ensure the definition of higher-risk building can be amended in line with evidence or the experience of the operating regime.

Justification for procedure selected

505. Regulations made under this power will be subject to the affirmative resolution procedure so will be considered by both Houses of Parliament. This Henry VIII power allows the statutory definition of higher-risk buildings to be amended and therefore changes which buildings are subject to the more stringent regulatory regime imposed by Part 4 of this Act. It is considered that the use of the power will be of significant interest to Parliament so it is important Parliament has the opportunity to debate proposals of this nature and consequently it is appropriate for this power to be subject to the affirmative resolution procedure in both Houses of Parliament.

Clause 65(1): Modification of Part 4 in relation to certain kinds of higher-risk building

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure

Purpose and context

506. This clause includes a power enabling the Secretary of State to modify how Part 4 of the Bill (in-occupation requirements for higher-risk buildings) applies in relation to prescribed categories of higher-risk building. For example, this clause allows the Secretary of State to apply only certain parts of the in-occupation regime to some types of higher-risk buildings.

Justification for delegation

507. The scope of the new regime needs to be guided by the latest evidence on building safety risks, with the necessary flexibility to adjust the scope and application of the regime without needing to amend primary legislation.

508. It is not possible to determine in advance what evidence might come forward over the years as to the types of building that should be subject to stronger regulation. Because the type of buildings that might be brought into the scope of the regulatory regime in future is unknown, we need a power to apply the regulatory regime flexibly in a way that is appropriate to the type of building.

509. For example, in future, the Secretary of State, following advice or a recommendation from the Building Safety Regulator, may decide that it is necessary to bring tall office blocks within the definition of a higher-risk building; but due to the nature of the occupants it is decided it would not be appropriate to apply the resident engagement requirements of the regime to office workers, and

so this power to modify Part 4 of the Bill could be used to switch off that element of the regime for tall office blocks.

Justification for procedure selected

510. Regulations made under this power will be subject to affirmative resolution procedure in both Houses of Parliament. If exercised, this power would impact on the legislative regime by modifying how Part 4 will apply to a category of higher-risk building. For example, duties on residents or some of the duties on the Accountable Person could be switched off. Consequently, it is considered appropriate that the use of the power should be subject to the scrutiny of debates and approvals in both Houses of Parliament.

Clause 68(4): Meaning of "occupied" higher-risk building etc

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure

Purpose and context

511. The new regulatory regime will regulate by reference to building safety risks including those affecting higher-risk buildings. Most of the obligations on Accountable Persons arising under Part 4 of the Bill start from the point that a higher-risk building becomes occupied. This clause defines the meaning of 'occupied' for the purpose of this part of the Bill by reference to the number of residential units within the building that are occupied by residents.

512. Subsection (4) creates a power for the Secretary of State to amend the definition of both "occupied" and "resident" of a higher-risk building through regulations subject to the affirmative procedure. It also includes a power to define the meaning of being a 'resident' of a residential unit.

Justification for delegation

513. The power to amend these definitions in regulations is required to ensure that the regime is adaptable for the future. This provides the flexibility required if the scope of this part of the regime is narrowed or extended as our understanding of building safety risks changes over time.

514. Whilst the new regime as recommended in the Independent Review is focused on occupied residential buildings, future changes to what constitutes a building safety risk may necessitate the need to extend the Part 4 regime to other types of buildings such as hospitals or stadia which typically don't have residential occupiers, requiring the trigger for the Part 4 obligations to be amended. The delegated power is necessary to facilitate this.

Justification for procedure selected

515. Regulations made under these powers will be subject to affirmative resolution procedure in both Houses of Parliament as amending the definition of 'occupation' and a 'resident' of a higher-risk building in the Bill would affect the point at which many of the Part 4 obligations begin to apply. The same rationale applies to the power to define the meaning of being a 'resident' of a residential unit. Consequently, it is considered appropriate that the use of the power should be subject to the scrutiny of debates and approvals in both Houses of Parliament.

Clause 69 (7): meaning of "Accountable Person" etc

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure

Purpose and context

516. As part of the new regulatory regime, statutory obligations will be placed on the Accountable Person, making them responsible for managing the fire and structural safety of their higher-risk residential building.

517. This clause defines who the Accountable Person is for any given building in scope of the new regime.

518. Subsection (7) gives a power to the Secretary of State through regulations to amend the definition of the Accountable Person.

Justification for delegation

519. The power to amend the definition of 'Accountable Person' in regulations is required to ensure that the regime is adaptable for the future. The scope of the new regime may change over time. As the Bill includes a power, at clause 62(5), to bring new buildings into scope, it is necessary for the Secretary of State to have the power to amend this clause to ensure the definition of 'accountable person' in relation to any new buildings covers the appropriate person to take on the obligations of the Accountable Person.

Justification for procedure selected

520. Regulations made under this power will inevitably place statutory duties on individuals/entities for parts of a higher-risk building. This will bring with it serious obligations and potential sanctions for non-compliance. Therefore, the Government considers that it would be appropriate to subject the regulations to the affirmative resolution procedure to allow the scrutiny of debates and approvals in both Houses of Parliament.

521. The amendment of a definition could potentially have wide ranging effect as it brings the obligations and sanctions into effect against a wider remit of

people that could be captured by any further amendment to this clause. Therefore, it is affirmative procedure to enable adequate scrutiny. The Government considers that it would be appropriate to subject the regulations to the affirmative resolution procedure to ensure both Houses have the opportunity to consider any proposed amendments.

Clause 71: Part of a building for which an accountable person is responsible

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure

Purpose and context

522. As part of the new regulatory regime, statutory obligations will be placed on the Accountable Person, making them responsible for managing the fire and structural safety of their higher-risk residential building

523. This clause 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.

Justification for delegation

524. The power to define which parts of a higher-risk building an Accountable person is responsible for through regulations is required to provide clarity to Accountable persons about the areas that fall under their remit for the purposes of fulfilling their duties under the Bill and to all other entities affected by the Bill who will be able to work out (where there are multiple Accountable Persons) where responsibility lies, ensuring certainty.

Justification for procedure selected

525. Regulations made under this power will inevitably place statutory duties on individuals/entities for parts of a higher-risk building. This will bring with it serious obligations and potential sanctions for non-compliance. Therefore, the Government considers that it would be appropriate to subject the regulations to the affirmative resolution procedure to allow the scrutiny of debates and approvals in both Houses of Parliament.

526. The amendment of a definition could potentially have wide ranging effect as it brings the obligations and sanctions into effect against a wider remit of people that could be captured by any further amendment to this clause. Therefore, it is affirmative procedure to enable adequate scrutiny. The Government considers that it would be appropriate to subject the regulations to the affirmative resolution procedure to ensure both Houses have the opportunity to consider any proposed amendments.

Clause 73(5): Requirement for completion certificate before occupation

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative Procedure

Purpose and context

527. Under the new more stringent regulatory framework in design and construction for higher-risk buildings, the relevant duty holder will be required to submit a completion certificate application to the Building Safety Regulator at what is known as Gateway three, which reflects 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.

528. Under the new regime, such a completion certificate will be required for the Principal Accountable Person's application to register the building for occupation and it will be an offence to occupy a building that has not been registered. This creates a 'hard stop' to occupation. Registration will however be a one-off process. Where buildings are occupied in stages, this means that registration would not be a 'hard stop' for subsequent phases of occupation. This clause therefore makes it an offence for an Accountable Person to allow occupation of a single residential unit or more in part of a higher-risk building that they are responsible for, without a completion certificate for the relevant building work.

529. Subsection (5) of clause 73 gives the Secretary of State the power by regulations to set out the description of the completion certificates to which the offence in this clause will apply.

Justification for delegation

530. The Independent Review set out in some detail the procedural arrangements which should be put in place for increased building control oversight of higher-risk buildings, in particular what are referred to as 'Gateways'. These procedural requirements, including those relating to completion certificates, need to be specified in detail to implement those recommendations. Providing for this to be done in secondary legislation provides more flexibility for how those procedural details can be described and provides the opportunity for consultation with affected bodies.

531. It is likely that over time, changes will be needed to reflect the experience of operating new building control procedures and issuing completion certificates for higher-risk buildings. Having the power to make changes in secondary legislation will make it easier to ensure the procedural requirements remain fit for purpose.

Justification for procedure selected

532. Defining the prescribed completion certificates, that the Accountable Person must obtain for part of a building before permitting occupation of that part, is a technical, procedural detail.

533. Given the procedural and administrative nature of this power, the choice of negative procedure is considered to provide for appropriate scrutiny.

Clause 75(4) and (5): Registration of higher-risk buildings

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

534. To enable an effective approach to the regulation of higher-risk buildings, the Government intends to implement a system of building registration.

535. The registration system requires the Principal Accountable Person for a higher-risk building to notify the Building Safety Regulator of the building and to provide details about the building. The clause requires the Building Safety Regulator to publish a register of higher-risk buildings and makes provision for their removal from the register if they become empty or the building is no longer a higher-risk building.

536. Subsection (4) makes provisions to allow 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.

537. Subsection (5) gives the Secretary of State the power by regulations to set out provisions about the application process including the form and content of applications, information and required documentation they must include, manner of making an application, withdrawal of an application and the process for doing so.

Justification for delegation

538. Regulations made under this clause will set out administrative and procedural requirements only: - the form, content and what information about a building must be provided so that it can be registered, including any documentation to accompany it and the manner in which the application is made; it will also set out the circumstances and manner in which an application may be withdrawn; what of the information submitted in an application the register should contain; and the procedure for removal of the building from the register where the regime no longer applies to it.

539. It is not appropriate that uncontroversial procedural and administrative information of this kind is set out in primary legislation, whereas secondary legislation allows the flexibility for changes to be made these procedural rules.

Justification for procedure selected

540. The provisions to be set out under this power are administrative and procedural in nature and we consider the negative procedure in both Houses of Parliament is the appropriate level of scrutiny for regulations of this type.

Clause 77(1) and (2): Applications for building assessment certificates

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

541. This clause sets out further provision about applications for building assessment certificates. Subsection (1) sets out the information that must accompany an application for a Building Assessment Certificate. It gives the Secretary of State the power to make regulations prescribing information that must be provided about the Principal Accountable Person's mandatory occurrence reporting system, their compliance with information-provision duties to be set out in regulations made under clause 90, and their compliance with duties under clause 80 to appoint a Building Safety Manager.

542. Subsection (2) gives a power to the Secretary of State to make provisions regarding applications for the Building Assessment Certificate including the form, content and manner of applications, the way information should be provided and circumstances and manner of withdrawals of applications.

Justification for delegation

543. Duties on the Principal Accountable Person relating to mandatory occurrence reporting systems and provision of information to residents will be set out further in regulations, including made under clause 91. We require a power to specify in regulations what information relating to those duties, and the duty to appoint a Building Safety Manager, should be provided by Principal Accountable Persons with their applications for a Building Assessment Certificate. We do not consider it would be appropriate to set out detailed provisions of this type in primary legislation.

544. We also require a power for the Secretary of State to make provision in regulations about procedural matters which pertain to the Principal Accountable Person applying for the Building Assessment Certificate.

545. Over time the Building Safety Regulator may need to adapt the method it deems appropriate or the particular information, manner and circumstances in which that should be included. We want flexibility for the Building Safety Regulator to be able to quickly respond to any emerging issues in building safety, without needing to amend primary legislation.

Justification for procedure selected

546. The provisions to be set out under this power are administrative and procedural in nature, such as the form and content of the application, and information to accompany such an application concerning evidence of compliance with a duty and we consider the negative procedure in both Houses of Parliament is the appropriate level of scrutiny for regulations of this type.

Clause 78(5) and (6): Building assessment certificates

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

547. This clause sets out what the Building Safety Regulator must consider when deciding whether to grant or refuse an application for a Building Assessment Certificate. It provides that where the Building Safety Regulator refuses an application it must notify the Principal Accountable Person. There is also provision for the Building Safety Regulator to issue a notice to the Principal Accountable Person, should the regulator find contravention of a relevant obligation which it considers can be remedied promptly.

548. Subsection (5) sets out the relevant statutory duties on Accountable Persons that the Building Safety Regulator will assess compliance with when determining whether to grant a Building Assessment Certificate. It lists the relevant statutory requirements that must be complied with and gives a power to the Secretary of State to specify in secondary legislation any regulations made under the specified relevant statutory duties that must also be complied with.

549. Subsection (6) gives a power to the Secretary of State to make administrative and procedural provisions regarding Building Assessment Certificates and notices under this clause. The regulations will set out the period for which a certificate may be given and, in so doing, by which a building must be re-assessed for the Building Assessment Certificate, the form and content of a certificate or notice, and the way in which the certificate or notice will be provided to the Principal Accountable Person.

550. The Building Assessment Certificate will show to residents that the Accountable Persons of their building were meeting their relevant statutory obligations at the time of assessment.

Justification for delegation

551. We require a power for the Secretary of State to make provision in regulations that requirements set out in relevant secondary legislation may be added to the list of obligations Accountable Persons must have met to be granted a Building Assessment Certificate.

552. We also require a power to make regulations about Building Assessment Certificates and notices to Principal Accountable Person: the period for which a certificate may be given, the form, content of and manner in which the regulator must give a certificate or notice. Over time the Building Safety Regulator may need to change the Building Assessment Certificate as appropriate to reflect maturing of the sector or the advancement of digital information technology. We want flexibility for the Building Safety Regulator to be able to respond quickly to building safety risks, without needing to amend primary legislation.

553. A functional Building Safety Regulator will require broad powers. The negative procedure will allow them to align their regulatory regimes and do it quickly. The primary impact will be on the Building Safety Regulator.

Justification for procedure selected

554. The provisions to be set out under this power are administrative and procedural in nature and we consider the negative procedure in both Houses of Parliament is the appropriate level of scrutiny for regulations of this type.

Clause 79(1): Duty to display building assessment certificate etc

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

555. Subsection (1) of this clause gives a power to the Secretary of State to make provision in regulations about the form the notice should take, and the information about Accountable Persons and Building Safety Manager of the building that are to be contained in the notice that the Principal Accountable Person is required to display in a conspicuous position in the building. We intend it will specify the name(s) and contact details of the Principal Accountable Person, Accountable Person(s) and any Building Safety Manager. This will provide transparency to residents, 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.

Justification for delegation

556. Regulations made under this clause will set out administrative and procedural requirements only – namely, the form and content of the notice.

557. It is not appropriate that uncontroversial procedural and administrative information of this kind is set out in primary legislation, whereas secondary legislation allows the flexibility for changes to be made these procedural rules, as made be needed in future.

Justification for procedure selected

558. The provisions to be set out under this power are administrative and procedural in nature and we consider the negative procedure in both Houses of Parliament is the appropriate level of scrutiny for regulations of this type.

Clause 81(3): Appointment of building safety manager where multiple Accountable Persons

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

559. The Independent Review set out that all buildings be required to have in place a named Building Safety Manager with the relevant skills, knowledge and expertise for the day to day management of a building, or for the duty holder to declare they will take on the role themselves.

560. This clause sets out the mechanism through which a single Building Safety Manager appointment is made for a building with more than one Accountable Person. The appointment is to be made by the Principal Accountable Person, in consultation with the other Accountable Persons with whom it will try to come to an agreement about the terms for sharing the proposed building safety manager's expenditure.

561. Subsection (3) gives a power to the Secretary of State to set out, in secondary legislation, provision relating to the consultation and terms of agreement for sharing expenditure between the Principal Accountable Person and other Accountable Persons, and provision regarding all Accountable Persons' right to apply to the tribunal in relation to disputes regarding the proposed appointment, including the terms on which it is made.

562. Subsection (4) provides that the principal Accountable Person may recover such proportion of building safety manger expenditure as determined by the tribunal or in accordance with regulations made in subsection (3), where no agreement is made under this section.

Justification for delegation

563. The Building Safety Manager must be in place if a building is occupied, unless the exception in clause 83 is relied upon; therefore, to prevent delays and provide certainty, it is necessary to set out details relating to the consultation process between Accountable Persons for a proposed appointment, which is likely to include the timeframes in which the consultation must take place and the documented evidence of what has been agreed.

564. The consultation between Accountable Persons is an administrative and procedural matter. The agreement reached on the sharing of expenditure as a result of the consultation is a matter for the parties involved, taking into account matters such as their legal interest in the building and the proposed role of the Building Safety Manager. Therefore, it is appropriate that this level of information is set out in delegated legislation.

565. The process for reaching a determination on the proposed appointment, including matters such as the terms of appointment and how the payment is to be divided under this clause, where no agreement can be reached, is intended to be by way of an application to the First-tier Tribunal. However, the provision in regulations about proposed agreements are intended to assist the multiple Accountable Persons in one building to reach an agreement, with regard to the terms of appointment and sharing the costs of a building safety manager, without recourse to the tribunal. The secondary legislation will provide details of the relevant considerations for determining the terms of appointment and setting out how the costs should be shared where it is not agreed and ultimately, will set out the detail regarding conferring the right on the Accountable Person to apply to the tribunal in relation to the terms of the appointment and sharing costs in relation to the building safety manager. Decisions by the Tribunal will be on a case by case basis, based on the technical detail relevant to the circumstances of each application. However, there will be matters, such as the legal interests of each Accountable Person in the building and the proposed role of the Building Safety Manager, that will likely be relevant in all cases.

Justification for procedure selected

566. The provisions in respect of consultations and provision to apply to the tribunal to be set out under these powers are procedural and administrative in nature and are suitable for the level of scrutiny provided by the negative procedure in both Houses of Parliament.

567. Making provision for relevant considerations and factors for setting out terms, between Accountable Persons, for sharing building safety manager expenditure where no agreement is reached, is likely to be technical and detailed and may need to change in future in response to improve in this new regulatory regime. In the Department's view, Parliament will want the opportunity to scrutinise these regulations but, given their nature, we suggest that the negative procedure will provide Parliament with the necessary oversight.

Clause 83(6): Exception from duty to appoint Building Safety Manager

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

568. The Independent Review set out that all buildings be required to have in place a named Building Safety Manager with the relevant skills, knowledge and expertise for the day to day management of a building, or for the duty holder to declare they will take on the role themselves.

569. This clause provides for an exception from the duty to appoint a Building Safety Manager. Where the exception is relied upon, the Principal Accountable Person must be satisfied of their requisite competence to carry out the functions and must notify the Building Safety Regulator of this.

570. Subsection (6) gives a power to the Secretary of State to set out, in secondary legislation, further requirements about the form of such a notification, the information to be contained in it and the way it is to be given.

Justification for delegation

571. Details about the requisite form, required information and process of notifying the Building Safety Regulator, necessary for a Principal Accountable Person to confirm their suitability to deliver the role expected of a Building Safety Manager, is solely administrative and procedural. Therefore, it is appropriate that this level of information is set out in delegated legislation.

Justification for procedure selected

572. The provisions to be set out under this power are administrative and procedural in nature, namely the form, content and manner of a notification, and we consider the negative procedure in both Houses of Parliament is the appropriate level of scrutiny for regulations of this type.

Clause 84(3): Section 83: further provisions where multiple Accountable Persons

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

573. The Independent Review set out that all buildings be required to have in place a named Building Safety Manager with the relevant skills, knowledge and expertise for the day to day management of a building, or for the duty holder to declare they will take on the role themselves.

574. This clause sets out the mechanism which a Principal Accountable Person relying on the exception to the duty to appoint a Building Safety Manager must follow for a building with more than one Accountable Person. Before notifying the Building Safety Regulator, as required by Subsection (6) of Clause 83, the Principal Accountable Person must consult with other Accountable Persons with whom it will try to come to an agreement about the terms for sharing the relevant expenditure

575. Subsection (3) gives a power to the Secretary of State to set out, in secondary legislation, provision relating to the consultation and terms of agreement for sharing expenditure between the Principal Accountable Person and other Accountable Persons, and provision regarding all Accountable Persons' right to apply to the tribunal in relation to disputes regarding the proposal, including the terms on which it is made.

576. Subsection (4) provides that the principal Accountable Person may recover such proportion of its relevant expenditure as determined by the tribunal or in accordance with regulations made in subsection (3), where no agreement is made under this section.

Justification for delegation

577. The notification regarding the exception to the duty to appoint a Building Safety Manager must be given before a building is occupied; therefore, to prevent delays and provide certainty, it is necessary to set out details relating to the consultation process between Accountable Persons for instances where the Principal Accountable Person proposes relying this exception, which is likely to include the timeframes in which the consultation must take place and the documented evidence of what has been agreed.

578. The consultation between Accountable Persons is an administrative and procedural matter. The agreement reached on the sharing of relevant expenditure as a result of the consultation is a matter for the parties involved, taking into account matters such as their legal interest in the building and the proposed role of the Principal Accountable Person across the whole building. Therefore, it is appropriate that this level of information is set out in delegated legislation.

579. The process for reaching a determination on an agreement for expenditure, where there are multiple Accountable Persons and exception not to appoint a Building Safety Manager is being relied upon, including matters such as the terms of agreement between Accountable Persons and how relevant expenditure is to be divided under this clause, where no agreement can be reached, is intended to be by way of an application to the First-tier Tribunal. However, the provision in regulations about proposed agreements are intended to assist the multiple Accountable Persons in one building to reach an agreement, with regard to the terms and sharing the relevant expenditure, without recourse to the tribunal. The secondary legislation will provide details of the relevant considerations for determining the terms of agreement and setting out how the costs should be shared where it is not agreed and ultimately, will set out the detail regarding conferring the right on the Accountable Person to apply to the tribunal

in relation to the terms of the agreement and sharing of relevant costs in relation to the agreement. Decisions by the Tribunal will be on a case by case basis, based on the technical detail relevant to the circumstances of each application. However, there will be matters, such as the legal interests of each Accountable Person in the building and the proposed role of the Principal Accountable Person, that will likely be relevant in all cases.

Justification for procedure selected

580. The provisions in respect of consultations and provision to apply to the tribunal to be set out under these powers are procedural and administrative in nature and are suitable for the level of scrutiny provided by the negative procedure in both Houses of Parliament.

581. Making provision for relevant considerations and factors for setting out terms, between Accountable Persons, for sharing expenditure where no agreement is reached, is likely to be technical and detailed and may need to change in future in response to improvements in this new regulatory regime. In the Department's view the negative procedure will provide Parliament with the necessary oversight.

Clause 85(2): Assessment of building safety risks

Power conferred on: Building Safety Regulator
Power exercised by: Directions
Parliamentary procedure: None

Purpose and context

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

583. This clause provides that the Accountable Person must undertake an assessment of the building safety risks, in order to comply with their obligations in respect of managing the building. Further assessments should be carried out at regular intervals and where the Accountable Person suspects the assessment is no longer valid or they become aware of a significant change to the building.

584. Subsection (2) gives a power to the Building Safety Regulator to direct an Accountable Person to undertake a further assessment of the building safety risks.

Justification for delegation

585. The Building Safety Regulator needs the power, to be used on a case by case basis, to direct an Accountable Person to undertake a further assessment

where necessary. It is not possible to determine the exact circumstances in which the Building Safety Regulator would direct the Accountable Person to undertake a further assessment, but it is likely to be as a result of deficiencies in how the particular Accountable Person has assessed the risks in their building or where an incident in another building reveals a major incident scenario not previously considered or where recommendations have been made following a major accident or public inquiry.

586. Undertaking a suitable and sufficient risk assessment of the building safety risks is an important initial step in the systematic approach that the Accountable Person will need to adopt to achieve the outcome of managing the building safely. It is important therefore that the regulator has the ability to give case-specific directions so that such assessments can be carried out where necessary.

Justification for procedure selected

587. The power to issue directions is an important power for the Building Safety Regulator to use on a case by case basis. We do not consider it is appropriate for case by case decisions of this nature to be subject to Parliamentary scrutiny before the Building Safety Regulator is able to act.

Clause 86(3): Management of building safety risks

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

588. Within the context of their responsibilities, the Accountable Person must take steps necessary to manage building safety risks to ensure the safety of residents from major incident. As with existing risk management regimes, we intend that these steps are supported by a series of principles ordered to form a best practice approach to risk management, from most efficient to least efficient, the most efficient being to avoid risk, to aid the Accountable Person in their decision making.

589. Subsection (3) gives a power to the Secretary of State to set out these principles in regulations which the Accountable Person and the Building Safety Regulator will need to follow when assessing whether risks are being appropriately managed.

Justification for delegation

590. The protection principles may change over time, owing to technological advances or as the regime matures and so it is not appropriate for them to be set out in primary legislation. Some flexibility in the principles is therefore needed so that requirements can be adapted according to such developments.

Justification for procedure selected

591. The power to make regulations under this provision is subject to the negative resolution procedure in both Houses of Parliament. Similar sets of principles which list considerations that need to be borne in mind when assessing whether risks are being appropriately managed already exist in secondary legislation subject to the negative procedure. We therefore consider the negative procedure is the appropriate level of scrutiny.

Clause 87(3): Safety case report

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

592. The Independent Review recommended that new responsibilities should be placed on dutyholders to manage building safety risks through proactively engaging with a building's residents.

593. Subsection (1) of this clause places a duty on the Accountable Person to produce a Safety Case Report that demonstrates that they have both assessed the building safety risks and taken all reasonable steps to prevent a major incident arising from these risks and to reduce the severity of any such incident. It sets out key information that the Safety Case Report must contain.

594. Subsection (3) gives a power to the Secretary of State to set out in secondary legislation, further requirements about the form and content of the Safety Case Report.

Justification for delegation

595. The Bill sets out the purpose and scope of the Safety Case Report. Subsection (3) gives the Secretary of State power to set out further detail of the form and content of that report which will be technical and administrative information. We do not consider it is appropriate for detailed information as to the form and content of Safety Case Reports to be included in primary legislation.

596. Additionally, the type of information required may change over time as our understanding of different types of risk changes.

Justification for procedure selected

597. The regulations will make provision about the form and content of Safety Case Reports; they will therefore be procedural and administrative in nature, and we expect their contents to be uncontroversial. We consider that the negative

procedure in both Houses of Parliament provides the appropriate degree of Parliamentary scrutiny.

Clause 88(3): Notification and provision of report to the regulator

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

598. The Independent Review recommended that new responsibilities should be placed on dutyholders to manage building safety risks through proactively engaging with a building's residents.

599. Subsection (1) of clause 87 places a duty on the Accountable Person to produce a Safety Case Report, subsection (1) of clause 88 requires the Accountable Person to notify the Building Safety Regulator that the report has been completed. This is in order for the Building Safety Regulator to decide whether the Safety Case Report needs to be assessed at that point.

600. Subsection (3) gives the Secretary of State the power to set out in secondary legislation the form and process that such a notification will need to follow.

Justification for delegation

601. Information about the form and process of notifying the Building Safety Regulator about updates to Safety Case Reports is solely administrative and procedural. It is appropriate therefore that this level of information is set out in delegated legislation.

Justification for procedure selected

602. This power is concerned with specifying the form and process of providing notifications to the Building Safety Regulator; it is procedural and administrative in nature and the Government considers that it is appropriate to apply the negative procedure in both Houses of Parliament.

Clause 89(1), (2) and (5): Mandatory reporting requirements

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Power conferred on: Building Safety Regulator
Power exercised by: Directions
Parliamentary procedure: None

Purpose and context

603. Subsection (1) of this clause requires Accountable Persons to report certain information to the Building Safety Regulator. The Secretary of State is given the power to specify: the circumstances in which reports must be made; the information that must be reported; and the time by which reports must be made.

604. This power will be used to prescribe which safety-related incidents must be reported, as well as the information that the report must contain, the manner of reporting, and time periods for making the report (which may vary between incidents).

605. Subsection (2) gives a power to the Building Safety Regulator to specify in a direction the manner in which the Accountable Persons must submit reports. We expect that this power will be used to specify that reports must be submitted through an online portal.

606. Subsection (5) requires Principal Accountable Persons to establish and operate an effective mandatory occurrence reporting system which complies with prescribed requirements. The Secretary of State is given the power to specify the requirements of such a system. We expect that this power will be used to set the minimum standard for the operation of an effective and compliant mandatory occurrence reporting system. This would be to ensure that the Secretary of State is able to set an adaptable minimum standard for MOR systems, mitigating the risk of dutyholders setting up MOR frameworks 'in name only' which in other ways might meet legal requirements but would not be fit for purpose.

Justification for delegation

607. The nature of the information that must be reported will be subject to change over time in accordance with technical developments in safety standards and safety practices. Some flexibility in the occurrences to be reported is therefore needed so that requirements can be adapted according to such developments. Similarly, it may be necessary to adjust the time period in which reports must be made, the information that needs to be reported and the manner of reporting. Finally, it is important that any minimum standard for MOR frameworks set in legislation is adaptable, so that it can be amended in response to changes to risks and safety practices in the built environment in order to remain as relevant and effective as possible.

Justification for procedure selected

608. Regulations made under this clause will either be technical (changing the circumstances under which reporting is required or the requirements of the framework) or procedural (changing the time for reporting/information that must be reported) in nature, neither of which would be expected to be controversial. In both cases the Government considers that the negative procedure in both Houses of Parliament provides the appropriate level of scrutiny.

609. The direction-making power only gives the Building Safety Regulator the power to specify the way in which information should be reported – this will most likely be through an online portal. We do not consider any Parliamentary procedure to be necessary for this uncontroversial power.

Clause 90(1) to (4): Keeping information about higher-risk buildings

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

610. To ensure more effective building safety management throughout a building's lifecycle, the Independent Review recommended that a golden thread of good quality information should be created and maintained for each building.

611. This clause places a requirement on the Accountable Person to gather, keep, maintain and update certain required information about the building they are responsible for. Subsection (1) gives the Secretary of State the power to set out in regulations what the information is that should be kept in this manner and what standards the information must be kept in accordance with.

612. Subsections (2) and (3) allow regulations to set out particular documents and information that the Accountable Person must keep copies of, and that they must obtain, as far as possible, if they do not have it. These documents/information must be kept in accordance with the standards that will be prescribed in regulations made under subsection (1).

613. Subsection (4) gives the Secretary of State the power to make regulations setting out the points in time when these information-related duties will apply.

Justification for delegation

614. The Government intends to list the documents and information that will be classified as the golden thread of information, and the standards this information should adhere to.

615. The nature of the information and documents that must be stored in the golden thread of information will be subject to change over time in accordance with technical developments in safety standards and safety practices. Some flexibility in the listed information and documents required is therefore needed so that requirements can be adapted according to such developments. Similarly, the standards that must be adhered to are technical and procedural in nature. It is appropriate therefore that this level of information is set out in delegated legislation.

616. We also require further consultation with stakeholders to determine the documents and information that will be classified as the golden thread of information and to determine the standards the golden thread of information will have to follow. The Government has already engaged with some stakeholders and has determined that the information and standards are likely to be uncontroversial.

617. However, we need to conduct further research and standards to determine both the precise specificity of the level of information required and delineate specific standards. In particular, we are consulting stakeholders to identify areas where the existing British and International standards are either non-existent or unclear and where we would therefore have to provide guidance.

618. We also want the Building Safety Regulator to develop a suitable timescale for when these obligations must be complied with that is informed by operational considerations.

Justification for procedure selected

619. Given that the information to be covered by the golden thread requirements, and the standards to which it is to be kept, will be technical and administrative in nature, we consider that the level of scrutiny provided by the negative procedure is appropriate. In addition, as these regulations may need to be updated reasonably frequently as the regime matures and due to technological developments, we consider that the negative procedure will enable us to do this in a timely manner, without preventing the greater Parliamentary scrutiny available from holding a debate where this is considered appropriate by Parliament.

Clause 91(1) to (4) and (6): Provision of information etc to the regulator, residents and other persons

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure for regulations under (1), (3), (4) and (6) and Negative procedure for regulations made under subsection (2)

Purpose and context

620. To ensure more effective building safety management throughout a building's lifecycle, the Independent Review recommended that a golden thread of good quality information should be created and maintained for each building. In certain situations, the Accountable Person will need to share some or all of this information.

621. The Accountable Person will need to share this information, in particular with the Building Safety Regulator (for the purposes of checking compliance and obtaining information about buildings), with another Accountable Person for the building (for the purposes of building safety) with residents and flat owners (to

provide information about the building), and also with other persons as set out in regulations.

622. The information and documentation that the Accountable Person must provide to residents, owners of flats or the Building Safety Regulator or other persons, may be specified in regulations made under this clause. For example, we may provide that the Accountable Person must notify the Regulator if it appoints an insolvency practitioner (administrator, trustee in bankruptcy, liquidator) under the Insolvency Act 1986. The Accountable Person may also be required to provide details to ensure the Regulator can ensure the ongoing safety of the building whilst insolvency proceedings are progressed.

623. The power enables the Secretary of State to further provide in regulations the way in which information or documents must be given and the form in which they are given (which must be accessible). The clause also allows regulations to set out 'standards' with which the information and documentation must comply.

624. The clause also provides a power to make exceptions within the regulations as to duties under these regulations.

625. This duty relates to a number of other clauses:

- Clause 92 which provides for regulations to be made as to the information that must be passed on by an outgoing Accountable Person to their successors, so that the golden thread of information is maintained;
- Clause 94 which provides that an Accountable Person must provide further information about the building to any resident or owner on request. The list of information that must be made available on request will be set out in secondary legislation; and
- Clauses 95 and 96 on complaints handling which requires all Accountable Persons and the Building Safety Regulator to have an operational complaints process.

Justification for delegation

626. Defining the prescribed circumstances for sharing information and the time period by which this information must be shared will require procedural detail which is not appropriate for primary legislation. Nor would it be appropriate to set out the actual information that must be provided. The prescribed circumstances may change over time as ownership structures of properties in scope alter and the information that must be provided may need to be varied in the light of experience, so it is appropriate to have the flexibility to do so without requiring the amendment of primary legislation.

627. The clause also provides a power to make exceptions within the regulations as to duties these regulations will impose, which is a flexibility required to respond to operational experiences of the regime. The regulations may specify that disclosure does not breach any obligation of confidence owed by

the person making the disclosure or any other restriction on the disclosure of information. This could include restrictions in primary legislation.

628. These regulations will need to be developed in consultation with building owners and other stakeholders, to ensure the regulation sufficiently captures all circumstances in which responsibility for a building changes and identifies when the information should be shared.

Justification for procedure selected

629. The regulations under subsections (1), (3), (4) and (6) will make provision about the Accountable Person sharing information and documentation, including matters like the nature of the information/documentation to be shared, together with to whom it must be shared. Furthermore, the regulations will provide for any express exceptions to the duties imposed under the regulations. These regulations could therefore switch off a duty by overriding restrictions on the disclosure of information contained therein. For this reason the Government considers that the affirmative procedure is appropriate in order that Parliament can scrutinise any such regulations.

630. The regulations under subsection (2) are operational and administrative, including the time for sharing information and the way in which it must be given. The choice of negative procedure is considered to provide for appropriate scrutiny and opportunity for debate, if desired, without requiring a debate on operational details as a matter of course. We therefore consider the negative procedure appropriate for these regulations.

Clause 92(2), (3), (4) and (5): Provision of information etc on change in Accountable Person

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure for regulations under subsections (2), and (5); Negative procedure for regulations under subsections (3) and (4)

Purpose and context

631. To ensure more effective building safety management throughout a building's lifecycle, the Independent Review recommended that a golden thread of good quality information should be created and maintained for each building.

632. In certain situations, the Accountable Person will need to share this information. This clause provides for an outgoing Accountable Person to have to provide specified golden thread of information or copy documents to its new successor Accountable Person and information to the Regulator as set out in regulations made under this clause.

633. Subsection (2) sets out what information the outgoing Accountable Person must give to the next Accountable Person who is responsible for the same area for which they were responsible.

634. Subsection (3) gives the Secretary of State the power to make regulations setting out how the information must be shared, and by when and the way it must be shared. Regulations may also set out the standards that must be applied to that information to ensure it is accessible to the new Accountable Person.

635. Subsection (4) give the Secretary of State the power to make regulations setting out what information an outgoing Accountable Person must provide to the regulator and the manner for doing so.

636. Subsection (5) gives the Secretary of State the power to make regulations setting out that disclosure of information under this section does not breach an obligation of confidence owed by or any other restriction on such disclosure imposed upon the outgoing Accountable Person.

Justification for delegation

637. Defining the prescribed information that the outgoing Accountable Person has to provide to the new Accountable Person under subsection (2), the standards that it must comply with, how the information is shared and the time period by which this information must be shared under subsection (3) will require procedural detail which is not appropriate for primary legislation. It is appropriate to have the flexibility to do so without requiring primary legislation.

638. Similarly defining the prescribed information that the outgoing Accountable Person has to provide to the Building Safety Regulator under subsection (4) and the way the information must be given will require procedural and technical detail which is not appropriate for primary legislation. We need to conduct further research with the Building Safety Regulator to determine precisely how the information will be submitted to them. It is appropriate to have the flexibility to do so without requiring primary legislation.

639. However, subsection (5) provides that the regulations may specify that the disclosure does not breach any obligation of confidence owed by the person making the disclosure or any other restriction on the disclosure of information. This could include restrictions in primary legislation.

640. There regulations will need to be developed in consultation with stakeholders, to ensure that the required standards reflect industry practice.

Justification for procedure selected

641. The regulations will make provision about the prescribed information. This applies to subsection (2) which relates to the information an outgoing Accountable Person has to provide to the new Accountable Person. It also relates to subsection (5) under which regulations could switch off a duty by overriding

restrictions on the disclosure of information contained therein. For this reason, the Government considers that the affirmative procedure is appropriate in order that Parliament can scrutinise any such regulations.

642. Regulations under subsections (3) and (4) are operational and administrative including the time frame for sharing information, the way in which the information should be shared. The choice of negative procedure is considered to provide for appropriate scrutiny and opportunity for debate, if desired, without requiring a debate on operational details as a matter of course.

Clause 93(1) and (6): Residents' Engagement Strategy

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

643. 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.

644. This clause requires that the Principal Accountable Person produce a Residents' Engagement Strategy for promoting the participation of residents in building safety decisions made about their building. In doing so they should coordinate and cooperate with the other Accountable Persons in the building. The clause provides that the Residents' Engagement Strategy must set out:

- the information that will be provided to residents and owners about decisions relating to the management of the building;
- the aspects of those decisions that the Accountable Person will consult them about;
- the arrangements for obtaining and taking account of residents and owners views; and
- how the appropriateness of the Accountable Person's methods for promoting participation will be measured and kept under review.

645. Subsection (1) and (6) gives the Secretary of State the power by regulations to prescribe the interval for review of the strategy and make further provision in relation to the contents of the Residents' Engagement Strategy and the way in which a copy of the strategy is to be provided to residents and owners. Regulations made under subsection (1) and (6) will be subject to the negative procedure.

Justification for delegation

646. The regulation making power under subsections (1) and (6) will be used to provide additional minimum requirements for the timing, content and delivery of

a Residents' Engagement Strategy so that everyone has the opportunity to participate in the decision-making process for their home. This will require a level of detail, that would not be suitable for inclusion in primary legislation. It is also likely to evolve over time on the basis of experience and good practice so allowing the minimum requirements to be amended via the negative procedure will enable any such changes to be made relatively quickly and easily.

647. In addition, the regulations might need to be updated over time to adjust to evidence from experience and emerging issues from across the sector.

Justification for procedure selected

648. For the powers in subsections (1) and (6), our intention is that any regulations will be developed in consultation with building residents, managers and owners. The regulations might need to be updated over time to adjust to evidence from experience and emerging issues from across the sector or to take account of evolving good practice. Given our intention that any regulations would be developed in consultation with a wide range of stakeholders, it is unlikely that any changes will be controversial, therefore our position is that the negative procedure is appropriate for these provisions.

Clause 94(1), (3), (4) and (5): Requests for further information

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure for subsections (1), (4) and (5) and Negative procedure for subsection (3)

Purpose and context

649. The Independent Review noted the importance of ensuring that residents have access to information about their building and the safety measures in place. It recommended that the dutyholder for a building should be responsible for proactively providing an accessible summary of building safety information to all residents. Under this clause residents and owners can request additional, further information or documents.

650. Subsection (1) allows the Secretary of State the power to prescribe information or documents that can be requested under this clause.

651. Subsection (3) gives the Secretary of State the power by regulations to make provisions about the way such information (or a copy of a document) must be given and the form of this information.

652. Subsection (4) gives the Secretary of State the power to make regulations which set out the circumstances when an Accountable Person is exempt from the requirements in this provision to make available a copy of a document or some or all of the requested information by a resident or owner.

Justification for delegation

653. The list of prescribed information/documentation may change over time. It can be amended more easily if the list is specified in secondary legislation. We require a dynamic regime; the way and form in which information/documentation is provided needs to be made in regulations to allow for flexibility to ensure that the Government can refine and make changes in future to improve the effectiveness of this clause in response, once the regime is in place. It is for the same reason that we need flexibility in the future for the circumstances in which an Accountable Person will not provide information/documentation.

Justification for procedure selected

654. Subsection (5) allows regulations made under any power in this clause to provide that the disclosure of information under the clause does not breach obligations of confidence or any other restriction on the disclosure of information. This could include providing that a restriction in primary legislation does not apply (though this doesn't apply to data protection legislation). For this reason, the Government considers that the affirmative procedure is appropriate in order that Parliament can scrutinise any such regulations.

655. Regulations under subsection (3) are operational and administrative. The choice of negative procedure is considered to provide for appropriate scrutiny and opportunity for debate, if desired, without requiring a debate on operational details as a matter of course.

Clause 95(2) and (3): Complaints procedure operated by the principal Accountable Person

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

656. The Independent Review recognised that residents generally do not have a strong enough voice in the safe management of their homes, finding it difficult to get their safety concerns addressed by building management.

657. This clause obliges the Accountable Person to establish and operate a complaints process. This requirement is designed to address the findings of the Independent Review.

658. Subsection (2) gives the Secretary of State the power to make provision about the establishment and operation of complaints systems under this section.

659. Subsection (3) allows in particular to make provision in regulations for how to make a complaint, timescales for complaint processing and response, and when the complaint must be referred to the Building Safety Regulator.

Justification for delegation

660. It is intended that regulations will be used to provide clear minimum requirements for the establishment and operation of an adequate complaints process, covering areas such as the information to be provided to and by residents, the approach Accountable Persons will take to triaging concerns by severity and urgency, the appropriate recording and investigation of complaints, and handling of the different circumstances under which concerns have to be escalated to the Building Safety Regulator. This will require a level of technical detail, scenarios and examples that would not be suitable for inclusion in primary legislation.

661. The regulations will also need to be revised over time to adjust to evidence from experience and emerging issues from across the sector. These regulations will be in relation to operational matters and our intention is that they will be developed in dialogue with building residents, managers and owners.

Justification for procedure selected

662. These regulations are technical and detailed in nature and the Government therefore believes that a negative procedure is the appropriate level of scrutiny for regulations of this type.

Clause 96(3) and (4): Complaints procedure operated by the regulator

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

663. The Independent Review recognised that residents generally do not have a strong enough voice in the safe management of their homes, finding it difficult to get their safety concerns addressed by building management.

664. Clause 95 requires the Accountable Person to establish and operate a complaints process. This requirement is designed to address the findings of the Independent Review.

665. Clause 96 requires the Building Safety Regulator to establish and operate a complaints procedure to handle concerns over building safety, the performance by an Accountable Person of their duties or the performance of a special measures manager of their functions. These complaints could be made to the Building Safety Regulator directly by residents or reassigned from other bodies such as ombudsmen or redress schemes.

666. Subsection (3) gives the Secretary of State the power by regulations to make provisions in relation to setting up and operating the Building Safety

Regulators' complaints procedure. Subsection (4) specifies that those regulations can, in particular, make provision about timescales for complaint processing and response, and action that the regulator should consider taking in response.

Justification for delegation

667. It is intended that regulations under this clause will be used to provide a clear framework of requirements to the Building Safety Regulator for the establishment and operation of their complaints process. These will cover areas such as the information to be provided by residents, the steps the Building Safety Regulator can take on receipt of an escalated safety concern, their approach to triaging concerns by severity and urgency and to handling and investigating them as well as the appropriate recording of safety concerns and reasonable timeframes for the Building Safety Regulator to consider and complete the different stages of handling them.

668. This will require a level of detail that would not be suitable for inclusion in primary legislation. The regulations will also need to be revised over time to adjust to evidence from experience and emerging issues from across the sector. These regulations will be developed in dialogue with building residents, managers and owners. As such, this procedure enables the regime to be agile in responding swiftly.

Justification for procedure selected

669. These regulations are technical and detailed in nature and the Government therefore believes that a negative procedure is the appropriate level of scrutiny for regulations of this type.

Clause 97(4)(b): Duties on residents and owners

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

670. This clause sets out a range of duties that residents and owners of flats in a higher-risk building must comply with. The clause states that a relevant person (residents and owners):

- must not act in a way that creates a significant risk of a building safety risk materialising;
- must not interfere with a relevant safety item; and
- must comply with a request, made by the AP, for information required for the purposes of a duty under clause 83 or 84.

671. Subsection (3) defines that a person 'interferes' with a relevant safety item if they:

- damage it,

- remove it, or
- do anything to, or in relation to, it that interferes with its intended function.

672. Subsection (4)(a) defines a 'relevant safety item' in this context to mean anything that:

- is in, or forms part of, the common parts and
- is intended to improve the safety of people in or about the building in relation to a building safety risk.

673. Subsection (4)(b) allows the Secretary of State to prescribe other items as relevant safety items.

Justification for delegation

674. Regulations made under subsection (4)(b) will add to the definition of 'relevant safety item'. The power is needed to make secondary legislation so the list of items can be revised over time to adjust to evidence from experience and emerging issues from across the sector.

Justification for procedure selected

675. Regulations made under subsection (4)(b) relate to emerging safety products developed to keep buildings and residents safe. We consider it appropriate for regulations of this type to be subject to the negative procedure in both Houses of Parliament.

Clause 98(6): Contravention notices

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative

Purpose and context

676. This clause specifies that an Accountable Person may give a contravention notice to a relevant person (resident or owner) if it appears to the Accountable Person that the relevant person has contravened or is contravening a duty under clause 97(2), see above.

677. Subsection (2) sets out that a contravention notice is a notice that:

- specifies the alleged contravention;
- specifies any steps that the Accountable Person considers the relevant person should take in order to remedy the contravention and a reasonable time for taking of those steps;
- specifies anything that the appropriate person considers the relevant person should refrain from doing, to avoid further contraventions; and
- contains an explanation of the steps that the Accountable Person may take if the notice is not complied with.

678. Where it appears to the Accountable Person that a resident has contravened the duty not to interfere with a relevant safety item, the Accountable Person may serve a notice requiring a specified sum to repair or to replace the safety item that has been interfered with. A sum may only be specified in the contravention notice if:

- it is necessary to repair or replace the item as a result of a contravention; and
- the sum is reasonable and does not exceed the cost of repairing or replacing the item.

679. Subsection (6) states that the Secretary of State may by regulations make provisions about contravention notices including:

- provision about the form of a notice and the way a notice is to be given; and
- further provision about the content of the notice

Justification for delegation

680. The regulation making power under subsection (6) will be used to provide additional minimum requirements for the content and delivery of a contravention notice. This will require a level of detail that would not be suitable for inclusion in primary legislation. It is also likely to evolve over time on the basis of experience and good practice so allowing the minimum requirements to be amended via the negative procedure will enable any such changes to be made relatively quickly and easily.

681. In addition, the regulations might need to be updated over time to adjust to evidence from experience and emerging issues from across the sector.

Justification for procedure selected

682. The regulations will set out details as to the form and content of the notices and as such will be administrative and procedural in nature. We consider it is appropriate for regulations of this type to be subject to the negative procedure in both Houses of Parliament.

Clause 101(1) and (7): Compliance notices

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Power conferred on: Building Safety Regulator
Power exercised by: Notice
Parliamentary procedure: No procedure

Purpose and context

683. This clause provides an enforcement tool for the Building Safety Regulator to use in enforcing compliance with the requirements for higher-risk buildings in occupation. A compliance notice under this clause will be able to

require an Accountable Person to rectify non-compliance with the requirements set out in Part 4 of the Bill at their own expense. These notices are case-specific sanctions, exercised on the basis of evidence available to the Building Safety Regulator, so cannot be provided for through legislation (whether primary or secondary).

684. Where it appears to the Building Safety Regulator that the contravention has or will place people in or about the building in imminent danger, the Building Safety Regulator may issue a specific type of compliance notice, known as an urgent action notice (subsection (4)). The main impact of using an urgent action notice rather than a normal compliance notice is that the Building Safety Regulator is likely to set a shorter period for carrying out the work; and, if the notice is appealed to the First-tier Tribunal (see clause 106), the effect of an urgent action notice is not suspended by that appeal.

685. Failure to comply with either type of notice could result in prosecution, with a maximum penalty of an unlimited fine or two years' imprisonment (subsection (5)). Subsection (7) enables the Secretary of State to make regulations excluding certain requirements under Part 4 of this Bill, or regulations made under it, from enforcement action by way of compliance notices.

Justification for delegation

686. In relation to the power, by regulations, to exclude certain requirements from enforcement action by way of compliance notices, the existing offence of breaching building regulations in section 35 of the Building Act 1984 includes a power to exclude certain provisions of those regulations from criminal liability, which has been used to make regulation 47 of the Building Regulations 2010. We are making similar provision in respect of compliance notices in the build stage (see clause 37) to ensure that there is consistency between the different enforcement provisions; it is therefore appropriate to make similar provision in order to be able to exclude from the ambit of compliance notices non-compliance with minor and technical requirements under Part 4 of the Bill. In relation to the power for the Building Safety Regulator to impose compliance notices, these are case-specific sanctions, exercised on the basis of evidence available to the Building Safety Regulator, so cannot be provided for through legislation (whether primary or secondary).

Justification for procedure selected

687. In relation to the power of the Building Safety Regulator to impose compliance notices, these will be used by the Building Safety Regulator on a case by case basis. It would not be appropriate for these to be subject to Parliamentary scrutiny before they are issued. In relation to the power to make Regulations under subsection (7) of this clause, this will be subject to the negative procedure. Building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and the Government believes that it is appropriate to utilise this procedure for regulations made under this clause, in order to maintain consistency across the regime. Furthermore, the contents of these regulations are likely to be uncontroversial, as

they will merely exclude certain minor requirements from the ambit of compliance notices, so again, we consider the negative procedure in both Houses of Parliament to be appropriate.

Clause 102(1) and (4): Compliance notices: supplementary

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

688. This clause provides a power to make provisions about compliance notices, which may be issued in respect of breaches of the requirements of Part 4 of the Bill. In particular, the Secretary of State may make provisions as to the form, content, giving of such notices, the extension of time for complying with such notices and as to their amendment and withdrawal.

689. It also sets out, at subsection (4), persons that the regulator must notify when a compliance notice is issued, including the local authority for the area in which the building is situation. This subsection includes a power for the Secretary of State to set out in regulations further persons who must be notified.

Justification for delegation

690. The regulations that would be made under this clause are likely to be detailed and procedural in nature and, in line with similar material in other regimes, we consider it appropriate to set out that detail in secondary legislation. The content of the regulations is likely to be uncontroversial and may need to be amended in the light of experience in operating the new regime, and therefore require flexibility that is not appropriate for primary legislation. As such, we consider it appropriate to set this material out in secondary rather than primary legislation.

Justification for procedure selected

691. Regulations to prescribe under this clause are largely procedural and will be subject to the negative procedure in both Houses of Parliament. The Government considers this to be appropriate for these regulations given the procedural nature of the matters to be specified, and their uncontroversial nature.

Clause 103(3): Offence: contravention giving rise to risk of death and serious injury

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

692. This clause provides an enforcement tool for the Building Safety Regulator to use in enforcing compliance with the requirements for higher-risk buildings in occupation, known as a 'compliance notice', including an 'urgent action notice' where the issue has or will place people in or about the building in imminent danger.

693. This clause sets out an alternative to a compliance notice or an urgent action notice where the Building Safety Regulator considers it appropriate, namely to prosecute the Accountable Person for contravening, without reasonable excuse, a requirement to such a degree that anyone in or about the building is placed at critical risk (defined in subsection (3) as "a significant risk of death or serious injury arising from a building safety risk").

694. This offence, like that of breaching a compliance notice in the previous clause, carries a maximum penalty of an unlimited fine or two years' imprisonment (subsection (2)). Subsection (3) enables the Secretary of State to make regulations excluding certain requirements under Part 4 of the Bill, or regulations made under it, from enforcement action by way of prosecution for an offence under this clause.

Justification for delegation

695. The existing offence of breaching building regulations in section 35 of the Building Act 1984 includes a power to exclude certain provisions of those regulations from criminal liability, which has been used to make regulation 47 of the Building Regulations 2010. We are making similar provision in respect of compliance notices in both build and occupation (see clauses 37 and 101) to ensure that there is consistency between the different enforcement provisions across the regime; it is therefore appropriate to make similar provision in order to be able to exclude from this offence non-compliance with minor and technical requirements under Part 4 of the Bill.

Justification for procedure selected

696. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament. Equivalent building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and the Government believes that it is appropriate to maintain this procedure for regulations made under this clause, in order to maintain consistency across the regime.

Clause 104 (11) & (12): Special Measures – Schedule 7 Special Measures.

Paragraph 2(11) and (12): Notification by regulator before applying for special measures order

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure for regulations made under paragraph 2(11) and affirmative procedure for regulations under (12).

Purpose and context

697. The Independent Review recommended the need for a regulator, who can hold dutyholders to account and utilise robust sanctions to ensure that building safety risks are managed for the whole building. The Government deemed it necessary to go beyond this recommendation, and have introduced a Special Measures Manager, to take over the management of risks in building as a last resort because serious or repeated failures by the dutyholder may place residents' lives at risk.

698. To enable this, the paragraph provides that the Building Safety Regulator must give notice, to a number of specified persons including the Accountable Persons and Building Safety Manager, of its intention to apply to the First-tier Tribunal to appoint a Special Measures Manager. This ensures that those persons who have an interest in the fire and structural safety of the building have the opportunity to provide comments and observations to Building Safety Regulator about its proposed decision to put it into Special Measures and the terms of any such order.

699. Paragraph 2(11) gives a delegated power to the Secretary of State to, by regulations, make administrative provision for notices made under this clause. This includes the form and the way in which the notice must be given.

700. Paragraph 2(12) gives a delegated power to the Secretary of State to, by way of regulations, amend the list of persons that must be notified of an application for a special measures order.

Justification for delegation

701. The power under Paragraph 2(11) is administrative and procedural and it is considered necessary because the form and the way in which the notice must be given will be subject to changes over time. How the Building Safety Regulator operates its communication with Accountable Persons and other persons, will be impacted not least by developments in digital technologies.

702. The power in Paragraph 2(12) to amend the list of persons that must be notified by the Building Safety Regulator of an application for a special measures order is required to ensure that the regime is adaptable for the future. The Secretary of State may wish to add other persons as those with an interest in the

fire and structural safety of the building may change, particularly if the scope of Part 4 of the Bill is widened.

Justification for procedure selected

703. Regulations made under subsections paragraph 2(11) will be subject to the negative procedure in both Houses of Parliament. Regulations made using this procedure would relate to operational and administrative detail. It is not appropriate that uncontroversial procedural and administrative information of this kind is set out in primary legislation, whereas secondary legislation allows the flexibility for changes to be made these procedural rules. The choice of negative procedure is considered to provide for appropriate scrutiny and opportunity for debate, if desired, without requiring a debate on operational and procedural details as a matter of course.

704. Regulations made under paragraph 2(12) will be subject to the affirmative procedure to allow the scrutiny of debates and approvals in both Houses of Parliament. Amendment to the list of persons notifiable of an application for a special measures order could narrow or widen those who should be consulted on the matters pertaining to the fire and structural safety of a building, and therefore the Government considers that it would be appropriate to subject the regulations to the affirmative resolution procedure.

Paragraph 10(2): Provision of financial assistance by regulator

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative

Purpose and context

705. This paragraph 10 provides the Building Safety Regulator with the requisite powers to provide financial assistance to a Special Measures Manager.

706. The paragraph ensures that the role of a Special Measures Manager can continue to be undertaken where an Accountable Person is unable to pay the amounts set out in the terms of the order and detailed in the financial management proposal. The paragraph therefore provides assurance of renumeration for the Special Measures Manager and ensures that works can be completed, and obligations of the manager under the court order can be complied with, by providing an alternate route of funding during the time which payments are not received from the Accountable Person. The power given to the Building Safety Regulator means that subject to conditions and provisions that the Secretary of State may specify in regulations, the Building Safety Regulator will

be able to provide the Special Measures Manager with the funds required in the form of a loan or a grant.

707. Sub-paragraph (2) grants a power to the Secretary of State to, by regulations, make provisions for the circumstances, any conditions and the type of financial assistance that may be provided to the Special Measures Manager by the regulator. The conditions that may be attached to any financial assistance provided may include conditions for repayment to the regulator.

Justification for delegation

708. The precise detail of what type of and in what circumstance and subject to what conditions financial assistance is necessary is something that will need to be informed by the regime and be flexible to change rather than set out in primary legislation. The Building Safety Regulator will need to assess the levels of support they are able to provide and under what circumstances they should do so.

Justification for procedure selected

709. The regulations will be procedural and administrative in nature, and we expect their contents to be uncontroversial. We consider that the negative procedure in both Houses of Parliament provides the appropriate degree of Parliamentary scrutiny.

Paragraph 13(9) and (10): Notification by regulator before applying to vary special measures order

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure for regulations made under paragraph 13(9) and affirmative procedure for regulations under paragraph 13(10).

Purpose and context

710. This paragraph provides that the Building Safety Regulator must notify the Accountable Person, and other persons specified in this clause, of its intention to vary a Special Measures Order which has been granted by the First-tier Tribunal.

711. The paragraph ensures that the Accountable Person and other persons have the opportunity to provide comments and observations to Building Safety Regulator about its decision and terms upon which to change the Special Measures management scheme as set out in the order.

712. Paragraph 13(9) grants a delegated power to the Secretary of State to, by regulations, make provision for notices made under this clause. This includes mandating the form and the way in which the notice must be given.

713. Paragraph 13(10) gives a delegated power to the Secretary of State to amend, by way of regulations, the list of persons that must be notified of an application to vary the special measures order.

Justification for delegation

714. The power under -paragraph 13(9) is considered necessary because the form and the way in which the notice must be given will be subject to changes over time. How the Building Safety Regulator operates its communication with those persons affected by a variation of the special measures order, will be impacted, not least, by developments in digital technologies.

715. The power in paragraph 13(10) to amend the list of persons notifiable by the Building Safety Regulator of an application for a variation to a special measures order is required to ensure that the regime is adaptable for the future. The Secretary of State may wish to add other persons as those with an interest in the fire and structural safety of the building may change, particularly if the scope of the Part 4 of the Bill is widened.

Justification for procedure selected

716. Regulations made under paragraph 13(9) will be subject to the negative procedure in both Houses of Parliament. Regulations made using this procedure would relate to operational and administrative detail. The choice of negative procedure is considered to provide for appropriate scrutiny and opportunity for debate, if desired, without requiring a debate on operational and procedural details as a matter of course.

717. The regulations made under paragraph 13(10) will be subject to the affirmative procedure to allow the scrutiny of debates and approvals in both Houses of Parliament. Amendment to the list of persons notifiable of an application for a special measures order could narrow or widen those who should be consulted on the matters pertaining to the fire and structural safety of a building, and therefore the Government considers that it would be appropriate to subject the regulations to the affirmative resolution procedure.

Paragraph 15(5): Notifications about special measures order

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure

Purpose and context

718. This paragraph provides that the Building Safety Regulator must notify the Accountable Person, and other persons specified in this clause as to making, variation or discharge of a Special Measures Order for an occupied higher-risk building.

719. Sub-paragraph (5) grants a delegated power to the Secretary of State to amend, by regulations, the list of persons who must be notified.

Justification for delegation

720. This power is considered necessary because who should be notified may be subject to changes over time and to ensure that the regime is adaptable for the future. The regulator may wish to add other persons as those with an interest in the fire and structural safety of the building may change, particularly if the scope of the regime is widened.

Justification for procedure selected

721. Regulations made under -paragraph 15(5) will be subject to the affirmative procedure to allow the scrutiny of debates and approvals in both Houses of Parliament. Amendment to the list of persons notifiable of an application for a special measures order could narrow or widen those who should be consulted on the matters pertaining to the fire and structural safety of a building, and therefore the Government considers that it would be appropriate to subject the regulations to the affirmative resolution procedure.

Clause 107(1), (2), and (3): Appeals against decisions of the regulator made under regulations

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

722. This clause confers a right of appeal on prescribed persons in regard of prescribed decisions made by the Regulator under Part 4 that will be set out in secondary legislation.

723. This section is intended to be used to provide a comprehensive right to appeal for decisions the Regulator will make in respect of higher-risk buildings, that are created in regulations.

724. For example, a decision by the regulator to treat an application for registration of a building as withdrawn will be in regulations, and there may need to be a right of appeal against such a decision.

Justification for delegation

725. Some elements of the building safety regime for occupation will be set out in regulations which are yet to be made; accordingly we will need to create a route of appeal for those decisions, which will itself need to be specified in secondary legislation.

Justification for procedure selected

726. Regulations to prescribe under this clause are largely procedural and will be subject to the negative procedure in both Houses of Parliament. The Government considers this to be appropriate for regulations made under this provision, given their uncontroversial nature.

Clause 108(4) Appeals: Supplementary

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

727. This clause relates to appeals made under clauses 105, 106 or 107.

728. 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.

729. Subsection (4) allows regulations to make provision to provide for the suspension during the appeal period of the effect of a notice (other than a compliance notice) or other thing done by the regulator. This concerns the effect of an appeal on a regulatory decision, for example, it may provide that bringing an appeal suspends, or does not suspend, a regulatory decision.

Justification for delegation

730. This clause allows for the making of regulations in respect of the tribunal's powers when considering appeals.

731. For example, the regulator wants to remove a building from the register because, on inspection, 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.

732. Specific regulations to suspend the impact of notices other than compliance notices during appeal, of decisions made by the regulator during appeal and any other provision regarding the effect of an appeal period provide flexibility for the new regime to adapt to regulatory needs in the future, and it would also not be appropriate to put detailed provision as to appeals rules in primary legislation.

Justification for procedure selected

733. Regulations to prescribe under this clause are largely procedural and will be subject to the negative procedure in both Houses of Parliament. The

Government considers this to be appropriate for regulations made under this provision, given their uncontroversial and largely procedural nature.

Clause 110(1): Guidance

Power conferred on: The Building Safety Regulator (with consent of the Secretary of State)
Power exercised by: Statutory guidance
Parliamentary procedure: None

Purpose and context

734. This clause sets out the areas of the building safety regime where the Building Safety Regulator may issue, revise and withdraw guidance with statutory force, including the process to be followed and the potential consequences of complying – or not – with the content of that guidance.

735. Subsection (1) sets out the areas where the Building Safety Regulator may issue guidance; they are:

- how to assess the competence of a prospective Building Safety Manager;
- mandatory reporting requirements for Accountable Persons;
- how to discharge the duty to keep information, or give information to residents and other persons; and
- how an Accountable Person should operate a complaints procedure for residents.

736. Subsections (1), (2) and (5) set out that the Building Safety 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 relevant statutory obligation, while not following the guidance will tend to establish non-compliance with the relevant statutory obligation.

Justification for delegation

737. The guidance intended to be issued under this power will be detailed and technical in nature and will not include legislative obligations, and as such, is unsuitable to be set out in primary or indeed secondary legislation. In addition, the content of such guidance is likely to change over time in the light of both the experience of the Building Safety Regulator and the regulated sector of the operation of the regime, as well as reflecting technical and technological developments.

Justification for procedure selected

738. The guidance intended to be issued under this power will generally be operational in nature and will be informative rather than imposing strict legal requirements (although see above for description of the legal force of this guidance), and as such, is appropriate to be guidance rather than primary or secondary legislation. In addition, the content of such guidance is likely to change over time as the regime matures, as well as reflecting technical and technological developments. The Secretary of State will be required to consent to the issuing, revising or withdrawal of any guidance under this power. For these reasons, the Government considers that Parliamentary oversight of this guidance is not required.

Clause 113: Implied terms in leases and recovery of safety related costs and Schedule 7: Building safety charges

Paragraph 2 (1), (2), (3), (5) and (6) of Schedule 2 to Landlord and Tenant Act 1985: "Building safety charges: landlord obligations"

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure`

Purpose and context

739. Schedule 8 of the Bill inserts a new schedule, Schedule 2, into the Landlord and Tenant Act 1985, which makes provisions in respect of the new 'building safety charge' introduced under clause 113. The Schedule deals with such matters as the costs which can be included in the charge, apportionment of costs, pre-conditions for demanding payment, and leaseholder protections.

740. Paragraph 2(1) sets out matters which a landlord must comply with in order to require payment of a building safety charge from a tenant. In particular, that the landlord must apportion costs as provided in paragraph 4, give the tenant a demand in writing specifying a payment date at least 28 days later, give the tenant a 'summary of rights and obligations', and comply with such conditions as may be prescribed.

741. Paragraph 2(2) provides that the Secretary of State may make regulations about the form and content of the summary of rights and obligations. Paragraph 2(3) sets out the nature of conditions that may be described – conditions in relation to accounting periods, budgets and estimates, reconciliation accounts etc. Paragraph 2(5) sets out that the tenant is given the right to withhold payments pending the landlord complying with the relevant obligations and provides that conditions may be prescribed in relation to the withholding of rent.

Justification for delegation

742. The precise requirements in relation to steps to be taken by a landlord to notify tenants of anticipated costs, estimated charges and expenditure subsequently incurred, are detailed technical matters suited to regulations. The

right to withhold rent is duly specified but it may be that problems encountered in practice will make it desirable for more detailed conditions to be formulated.

Justification for procedure selected

743. Regulations under paragraph 2 will be subject to the negative procedure in both Houses of Parliament. This is considered appropriate as the summary of rights and obligations will align with the equivalent document required in relation to service charges, the form and content of which has been laid down in regulations made under section 21B of the Housing Act 1985; the matters in respect of which conditions on the landlord are to be prescribed have been clearly identified; the prescribing of conditions in relation to the withholding of rent would be a matter of clarification only.

Paragraph 4(3) of Schedule 2 to Landlord and Tenant Act 1985: "Relevant building safety measures"

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure`

Purpose and context

744. Schedule 8 inserts a new schedule, Schedule 2, into the Landlord and Tenant Act 1985, which makes provisions in respect of the new 'building safety charge' introduced under clause 113. The Schedule deals with such matters as the costs which can be included in the charge, apportionment of costs, pre-conditions for demanding payment, and leaseholder protections.

745. Paragraph 4(2) contains a list of 'relevant building safety measures', being those steps or actions required of the Accountable Person pursuant to the duties under Part 4, the cost of which can be passed onto leaseholders via the building safety charge. These are management or running costs connected to the new regime.

746. Paragraph 4(3) makes provision so that, in the event that further management costs are identified or become relevant, the Secretary of State may by regulations add, remove or modify the measures.

Justification for delegation

747. The detailed list of relevant building safety measures has been included on the face of the Bill to demonstrate that the building safety charge relates to the management costs of the new regime and will not include the cost of remediation works. It may become apparent, once the regime is in operation, that there are additional measures which should be included or measures which need to be clarified, to ensure workability. It is desirable that the ability to make any necessary adjustments through regulations is established, to help ensure the smooth-running of the regime.

Justification for procedure selected

748. Regulations under paragraph 4 will be subject to the affirmative procedure in both Houses of Parliament. This is considered appropriate as, whilst changes made under the regulations are likely to be technical and uncontroversial, the regulations will amend provisions contained in primary legislation.

Paragraph 6(3) and (4) of Schedule 2 to Landlord and Tenant Act 1985: "Limitation of building safety charges: consultation requirements"

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure`

Purpose and context

749. Schedule 8 inserts a new schedule, Schedule 2, into the Landlord and Tenant Act 1985, which makes provisions in respect of the new 'building safety charge' introduced under clause 113. The Schedule deals with such matters as the costs which can be included in the charge, apportionment of costs, pre-conditions for demanding payment, and leaseholder protections.

750. Paragraph 6 deals with one of the protections afforded: the right for leaseholders to be consulted before a landlord commits to a contract for services which covers an extended period of time and involves significant sums. It provides that, if a landlord fails to consult tenants before entering into a 'qualifying building safety agreement, the amount that the landlord can recover from any tenant in respect of that contract will be limited to an 'appropriate amount'.

751. Under sub-paragraph (3), the Secretary of State may make regulations specifying the characteristics of a qualifying building safety agreement. Under sub-paragraph (4), the Secretary of State may make regulations specifying what is an appropriate amount. The amount of building safety costs which can be limited will be prescribed in regulations, through powers conferred on the Secretary of State as per Schedule 2, paragraph 6(4) and (5). Under sub-paragraph (4), the Secretary of State may make regulations specifying what is an appropriate amount.

Justification for delegation

752. It is necessary to take a power to address the detail of how the building safety charge is to be limited in relation to consultation requirements through regulations. It also allows for the provisions to be updated in the future where inflation and the actual cost of works or agreements increases to reflect inflation and industry changes.

Justification for procedure selected

753. Regulations under paragraph 6 will be subject to the negative procedure in both Houses of Parliament. This is considered appropriate as the regulations will align with the consultation regulations under section 20 and 20ZA of the Landlord and Tenant Act 1985 and, as such, will not be controversial.

754. These arrangements are to ensure that leaseholders have the same rights to be consulted in relation to significant costs to be incurred on building safety measures as they enjoy in relation to service charge expenditure.

Paragraph 7(3) and (4) of Schedule 2 to Landlord and Tenant Act 1985: "Consultation requirements: supplementary"

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

755. Schedule 8 inserts a new schedule, Schedule 2, into the Landlord and Tenant Act 1985, which makes provisions in respect of the new 'building safety charge' introduced under clause 113. The Schedule deals with such matters as the costs which can be included in the charge, apportionment of costs, pre-conditions for demanding payment, and leaseholder protections. The Schedule deals with such matters as the costs which can be included in the charge, apportionment of costs, pre-conditions for demanding payment, and leaseholder protections.

756. Paragraph 7, together with paragraph 6, deals with one of the protections afforded: the right for leaseholders to be consulted before a landlord commits to a contract for services which covers an extended period of time and involves significant sums. Paragraph 7(3) makes provision for consultation requirements to be prescribed for the purposes of paragraphs 6 and 7. Paragraph 7(4) sets out the nature of matters which may be included as such requirements. These include providing tenants with details of proposed agreements, obtaining estimates, giving tenants the opportunity to propose contractors, having regard to the observations of tenants and explaining reasons for choices made. The power to make regulations on consultation requirements are detailed in Schedule 7, paragraph 7(3) and may include such matters as details and estimates of the proposed works or agreements, invitation to relevant persons to propose contractors, to have regard to tenant observations including those of a recognised tenants association and to give reasons in specified circumstances for carrying out those works as set out in Schedule 2, paragraph 7(4).

Justification for delegation

757. It is necessary to take a power to provide for a full consultation in regulations due to the level of detail involved and the fact more than one process may need to be provided for to suit differing circumstances. This is the approach that has been taken in relation to service charges – consultation regulations have been made pursuant to section 20 of the Landlord and Tenant Act 1985. This is

the approach that has been taken in relation to service charges – consultation regulations have been made pursuant to section 20 of the Landlord and Tenant Act 1985.

758. In addition, it allows for the Secretary of State to consult with the sector on such procedural requirements and enables legislation to respond to developments in the sector over time.

Justification for procedure selected

759. Regulations under paragraph 7(3) and (4) of Schedule 2 will be subject to the negative procedure in both Houses of Parliament. This is considered appropriate as the regulations will align with the consultation regulations under sections 20 and 20ZA of the Landlord and Tenant Act 1985 and, as such, will not be controversial.

760. These arrangements are to ensure that leaseholders have the same rights to be consulted in relation to significant costs to be incurred on building safety measures as they enjoy in relation to service charge expenditure.

Paragraph 8(1)(c) of Schedule 2 to Landlord and Tenant Act 1985: "Limitation of building safety charges: excluded costs"

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure`

Purpose and context

761. Schedule 8 inserts a new schedule, Schedule 2, into the Landlord and Tenant Act 1985, which makes provisions in respect of the new 'building safety charge' introduced under clause 113. The Schedule deals with such matters as the costs which can be included in the charge, apportionment of costs, pre-conditions for demanding payment, and leaseholder protections.

762. Paragraph 8 provides one of the leaseholder protections. It sets out those costs which, although falling within the definition of 'building safety measures' are prohibited from being included in the building safety charge. As these costs are in relation to building safety measures, it is also not open to the landlord to include them within the service charge (by virtue of amendments to section 18 of the Landlord and Tenant Act 1985). Accordingly, these 'excluded costs' fall to be borne by the Accountable Person.

763. Paragraph 8(1)(c) enables such costs as may be prescribed to be added to the list of excluded costs.

Justification for delegation

764. In the event of the operation of the new regime revealing that there is a category of costs which ought not in fairness to be passed on to leaseholders, the

power to prescribe in paragraph 8 will enable the Secretary of State to be responsive to the issue.

Justification for procedure selected

765. Regulations under paragraph 8(1)(c) of Schedule 2 will be subject to the negative procedure in both Houses of Parliament. This is considered appropriate: any changes will be in accordance with review of and feedback on the operation of the regime, and are unlikely to be controversial.

Paragraph 15(9) of Schedule 2 to Landlord and Tenant Act 1985: "Building safety charge contributions to be held on trust"

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

766. Schedule 8 inserts a new schedule, Schedule 2, into the Landlord and Tenant Act 1985, which makes provisions in respect of the new 'building safety charge' introduced under clause 113. The Schedule deals with such matters as the costs which can be included in the charge, apportionment of costs, pre-conditions for demanding payment, and leaseholder protections.

767. Paragraph 15 deals with the last of those leaseholder protections. Mirroring provisions relating to service charges in section 42 of the Landlord and Tenant Act 1987, it addresses the fact that monies received by a landlord in respect of the building safety charge will be held on trust, and sets out statutory terms for such trust funds. In line with the equivalent service charge provisions, paragraph 15(9) makes provision allowing the Secretary of State to make regulations as to how such trust may be invested. In line with the equivalent service charge provisions, paragraph 15(9) makes provision allowing the Secretary of State to make regulations as to how such trust may be invested.

Justification for delegation

768. It is necessary to take a power to detail such requirements of administration of the trust fund to ensure that new secure opportunities for investment can be utilised in the future, if deemed appropriate. It will allow the opportunities for investment of building safety charge funds and service charge funds to remain aligned. the landlord manages the monies the future, if deemed. It will allow the opportunities for investment of building safety charge funds service charge funds to remain aligned.

769. It allows for the Secretary of State to consult on such requirements and provides flexibility for requirements to be tailored to different circumstances.

Justification for procedure selected

770. The negative procedure in both Houses of Parliament is considered appropriate for these operational matters.

Clause 114 provision of building safety information – section 49A(5)(f) of the Landlord and Tenant Act 1987

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure`

Purpose and context

771. Clause 114(3) inserts a new section 49A into the Landlord and Tenant Act 1987. Where a tenant rents a premises in a higher-risk building their landlord must give them relevant building safety information. 'Relevant building safety information' is defined in section 49A(5). It includes the fact that the building is a higher-risk building, contact details for the Accountable Person and other individuals involved in the management of the building and a postal address for the regulator. It also includes a power at subsection (5)(f) to prescribe other information as 'relevant building safety information'.

772. We intend to use this power to prescribe basic building safety information that the landlord will have to give to the tenant.

Justification for delegation

773. The type of information to be prescribed is likely to include a level of detail that is not suited to primary legislation. We also need the flexibility to amend the list of relevant building safety information if required as the Regulator and regime users build up experience.

Justification for procedure selected

774. This power can be used to add to the safety information given to tenants in higher-risk buildings. Any changes are likely to be uncontroversial. For this reason, we are of the view that the negative resolution procedure in both Houses of Parliament is appropriate.

Clause 117: Service charges in respect of remediation works – sections 20ZA(5A), 20D(1), (2), and (6) of the Landlord and Tenant Act 1985

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: None and negative procedure

Purpose and context

775. This clause inserts a new section 20D into the Landlord Tenant Act 1985. This section provides for new requirements on landlords to take reasonable steps to seek alternative sources of funding for prescribed works ('remediation works') and to ensure that relevant loans are available to leaseholders in prescribed buildings.

776. New section 20D(1) gives the Secretary of State the power to prescribe the works which qualify as remediation works and the buildings to which the section will apply.

777. New section 20D(2)(c) gives the Secretary of State the power to prescribe additional kinds of funding which landlords must take reasonable steps to seek before the cost of remediation works can be passed on to leaseholders through the service charge.

778. New section 20D(6) gives the Secretary of State the power to prescribe the court or tribunal to which leaseholders can make applications under new section 20D(5).

779. In addition, clause 117 inserts a new paragraph (5A) into section 20ZA of the Landlord Tenant Act 1985, which sets out the requirements for landlords to give information to tenants as part of the consultation process. It provides that the Secretary of State may prescribe in regulations the information that the landlord must provide to tenants, including information relating to the reasonable steps the landlord must take under new section 20D(2).

Justification for delegation

780. It is appropriate that these powers are delegated to the Secretary of State to ensure landlords are obliged to seek as wide a range of funding as possible in order to lower leaseholder costs for remediation works.

781. It is envisioned that these remediation works will be essential to ensuring buildings are safe and that prescribed buildings will be those where there is a high risk to life if works are not undertaken. It would be cumbersome and inefficient to update these requirements through amendments to primary legislation to reflect changes to the analysis of risk over time.

782. Prescribing additional sources of funding which landlords must take reasonable steps to seek before passing costs on to leaseholders in regulations will allow the Government to efficiently and more quickly protect leaseholders, as it will be easier to amend secondary legislation to update the requirements.

783. Allowing the Secretary of State to prescribe the court or tribunal to which leaseholder may make applications under new section 20D(5) will enable the appropriate tribunal to be identified in regulations without the need for primary legislation to bring this in line with future arrangements.

784. Prescribing the additional information that must be provided to leaseholders in secondary legislation will allow the Government more efficiently to update these requirements alongside any of the related elements of this clause. Without this, there is the risk that leaseholders will not have the necessary information or oversight of works for which they may be being required to pay.

Justification for Procedure

785. Regulations made under Clause 117will be subject to the negative procedure in both Houses of Parliament. We consider that this is the appropriate level of scrutiny given the technical nature of the requirements.

Clause 117: Service charges in respect of remediation works – section 20D(9) of the Landlord and Tenant Act 1985

Power conferred on: the Secretary of State
Power exercised by: guidance
Parliamentary procedure: None

Purpose and context

786. This clause creates a new section 20D(9) of the Landlord Tenant Act 1985. This section will enable the Secretary of State to issue guidance which informs landlords of the reasonable steps that they are expected to take towards ascertaining whether a source of funding at new section 20D(2) may be obtained and towards obtaining such monies. Whether a landlord has acted in compliance with this guidance may be relied on as evidence when, as at new section 20D(5) a tenant makes an application to the tribunal or court prescribed under new section 20D(6) that any or all remediation costs should not be regarded as relevant costs in regarding the service charge payable by the tenant.

Justification for Delegation

787. This statutory guidance will provide landlords with the information that they require to assure themselves and their leaseholders that they have taken reasonable steps to find alternative financing for remediation works in order to lower leaseholder costs. It is appropriate that guidance is used as the guidance will need to be able to be rapidly updated to keep pace with any changes made through regulations under new section 20D or the amendment to section 20ZA of the Landlord Tenant Act 1985.

Justification for Procedure

788. We consider the publication of guidance as to operational and procedural matters will be of a detailed nature and it is appropriate for these issues not to be subject to Parliamentary procedures.

Clause 120: Establishment of the New Homes Ombudsman scheme

Power conferred on: Secretary of State
Power exercised by: Competitive selection or direct appointment
Parliamentary procedure: None

Purpose and context

789. This clause gives the Secretary of State the power to make the necessary arrangements for the New Homes Ombudsman scheme in England, Scotland and Wales to be put in place. Subsection (2) provides examples of how the power may be exercised. The Secretary of State could make arrangements for the scheme to be established and maintained by an external scheme provider, such as a private sector company or another public sector body which has experience in delivering redress schemes (for example this could allow appointment of an industry-wide body already operating voluntarily in this space). Alternatively, the Secretary of State could establish and maintain the scheme "in-house" (within Government).

790. The housebuilding industry is open to the idea of having an industry-wide scheme and the industry may itself implement a scheme which would investigate and determine complaints on a voluntary basis, with the agreement of consumers and developers, before the legislation is in place.

791. If the industry does not establish a scheme itself which could be a suitable vehicle, prior to the legislation coming into effect, then the intent is for the Secretary of State to run a competitive selection process to appoint an entity to establish and maintain the scheme. The anticipation is that the scheme would operate as a concession. This would be in preference to establishing the scheme and running it within the department. The examples of how the arrangements might be made are not set out exhaustively and intended to demonstrate the flexibility as to how the Secretary of State may act to ensure that a scheme can be put in place.

792. Sub-section (3) gives the Secretary of State the power to give financial assistance to the New Homes Ombudsman scheme and to make payments to such a scheme in accordance with arrangements under subsection (1). Whilst it is intended for the scheme to be self-financing (funded through developer membership fees) it's felt necessary to retain this flexibility to ensure that the scheme is able to deliver its commitments.

793. Whoever is established to act as the New Homes Ombudsman scheme must meet the mandatory requirements set out in clause 121(1) of the clause and Schedule 9 to the Bill. The schedule also includes detailed provision at paragraphs 4 and 5 as to the level of fees which may be payable.

Justification for delegation

794. This power is delegated to the Secretary of State so that a statutory New Homes Ombudsman scheme can be appointed or selected as required.

795. The scheme must meet the requirements which are in clause 121(1) and Schedule 9.

796. It is considered appropriate to have the broad flexibility to either appoint an existing voluntary scheme, competitively select an entity to set up and run the scheme or set up a scheme to run it "in-house" and to have the flexibility to give financial assistance to such scheme to enable it to complete its tasks, or to otherwise make payments to it. This will allow the Secretary of State to select the best implementation method to deliver the policy. As an additional safeguard it is also considered appropriate to include provision in Schedule 9 in relation to the fees which may be payable by members, such that if the scheme is maintained by the Secretary of State or a person acting on behalf of the Secretary of State then the fees must be calculated on the basis of the actual costs incurred.

Justification for procedure

797. The selection and appointment of the New Homes Ombudsman scheme will cover detailed and technical issues including the requirements set out in Schedule 9 to the Bill which the scheme must meet, as part of the conditions of appointment in subsection (2) of the clause. It will not include legislative obligations other than to meet the requirements in clause 121(1) and Schedule 9. We consider it is appropriate that the arrangements for selecting and appointing the scheme is not subject to Parliamentary procedure.

798. Before exercising this power, the Secretary of State must consult the Welsh and Scottish Ministers.

Clause 122(6) and (7):" Relevant owner", "new build home" and "developer"

Power conferred on: The Secretary of State, the Scottish Ministers and the Welsh Ministers
Power exercised by: Regulations
Parliamentary procedure: Affirmative procedure

Purpose and context

799. New build homebuyers currently have no statutory right to access a redress scheme for complaints about developers. The New Homes Ombudsman plugs this significant gap for consumers.

800. The purpose of the power is to enable the 'relevant national authority' to add to the definition of who is a developer for the purposes of the New Homes Ombudsman scheme.

801. The relevant national authority is: in relation to homes in England, the Secretary of State; in relation the homes in Wales, the Welsh Ministers; in relation to homes in Scotland, the Scottish Ministers.

782. Before making regulations, the relevant national authority must consult the other two 'relevant national authorities' listed in subsection (7A). For instance, the Secretary of State must consult the Welsh and Scottish Ministers before making regulations for England under subsection (6)(b).

783. As is set out in clause 123 (Regulations under section 122), regulations made for this purpose 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.

Justification for delegation

802. There may be circumstances in which, once the scheme has been operating for a period, and the UK Government or a devolved administration has experience of the impact of the legislation, it becomes apparent that another category of legal person, such as a connected person should properly be viewed as a developer. This power is therefore designed to enable the relevant national authority to add to the definition of developer set out in the primary legislation to capture other persons who should be in scope and who should provide redress to consumers.

803. This power is provided to the relevant national authorities for homes in England, Scotland and Wales, as they may have specific policy priorities or identify specific issues in relation to their respective territories. The consultation requirement within this provision is designed to help to make sure that discussions take place between these authorities if a particular relevant national authority decides to make regulations; and so that they can consider the impacts upon the scheme and consider whether making similar changes to their territories is appropriate.

804. The power may also be used as an anti-avoidance measure should developers seek to avoid the requirements to become and remain a member of the New Homes Ombudsman by, for example, folding up its operations and establishing a different company.

805. 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, supplementary, incidental, transitional or saving provision, or for different provision to be made for different purposes. For example, transitional or saving provision may be necessary when a new category of developer is established, if persons falling within that category need time to become members of the new homes ombudsman scheme. Likewise, there may be some circumstances where exceptions should be made from a new additional description of developer set out in the regulations. By virtue of clause 123 (Regulations under section 122), the power therefore includes the ability to make such provision, which will depend on the context of each additional category of 'developer' added or removed from it and cannot be predicted in advance.

Justification for procedure selected

806. Clause 123 (Regulations under section 122) provides for the procedure and other matters connected to the power to make regulations under section 122 (6)(b).

807. The procedure of the relevant national authority is set out in 123 (Regulations under section 122. Regulations made under this power will be subject to an affirmative resolution procedure in both Houses of Parliament if exercised by the Secretary of State in relation to new homes in England. If made by Welsh Ministers, a draft of the statutory instrument must be laid before, and approved by a resolution of the Senedd Cymru. If made by Scottish Ministers, they are subject to the affirmative procedure.

808. If exercised, this power would impact on the legislative regime by adding to the categories of persons who may be developers and therefore required to become and remain members of the scheme for the relevant national authority which makes the regulations.

809. Consequently, it is considered that the use of the power should be subject to the affirmative procedure in the UK Parliament, in the Senedd and in the Scottish Parliament.

Clause 124(1) to (6): Power to require persons to join scheme and to provide information

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure

Purpose and context

810. New build homebuyers currently have no statutory right to access a redress scheme for complaints about developers. The New Homes Ombudsman plugs this significant gap for consumers.

811. Under this clause, the Secretary of State may by regulations require developers to become and remain members of the New Homes Ombudsman scheme for such period as specified (including in circumstances where they are no longer acting as developers); require members of the scheme to inform persons of a specified description of the scheme; make provision for civil sanctions to be imposed for failure to comply with the requirements (which must include rights to appeal and such other provisions as appropriate to safeguard the interests of persons on whom a sanction may be imposed); and make provision for the investigation and suspected breaches of the requirements, including the appointment an enforcement body to investigate suspected breaches.

812. In so doing the Secretary of State may also make provision requiring developers to publicise their membership.

813. The Secretary of State may also provide for exceptions to the requirement to become a member of the scheme in certain circumstances.

Justification for delegation

814. The purpose of the power is to enable the Secretary of State to require developers to join the scheme and remain a member for so long as is necessary once the scheme has been appointed, in accordance with clause 120. To require developers to become members without such a scheme being in place would be unworkable.

815. The detail of how the requirement upon developers above will be enforced is left to be set out in secondary legislation once a scheme has been appointed and once the Government has appointed a suitable enforcement body.

816. The purpose of requiring developers to publicise their membership is to raise awareness amongst consumers that, if something goes wrong with their purchase, they are aware of the route to seek redress through the New Homes Ombudsman scheme.

817. The purpose of providing for exceptions to the requirement to become a member of the scheme is to exclude certain developers, should it be necessary. Exceptions could, if necessary, be used in relation to properties developed by the Crown Estates or in circumstances where a developer already belongs to another redress scheme and alternative arrangements are in place.

818. It could also be used, if necessary, to exclude the Queen and Prince of Wales in their private capacity from mandatory membership of the New Homes Ombudsman so that it does not affect Her Majesty in her private capacity (within the meaning of the Crown Proceedings Act 1947).

Justification for procedure selected

819. Regulations made under this power will be subject to the affirmative resolution procedure in both Houses of Parliament. If exercised, this power would impact on the legislative regime by requiring developers to join a scheme and setting out the consequences for failure to do so. Consequently, it is considered that the use of the power should be subject to debate and approval in both Houses of Parliament.

820. Before exercising this power, the Secretary of State must consult the Welsh and Scottish Ministers. This requirement is designed to ensure that they have the opportunity to raise any relevant policy considerations or issues specific to Scotland and Wales in relation to such regulations before the power is exercised.

Clause 126(1) and (2): Developer's Code of Practice

Power conferred on: Secretary of State
Power exercised by: Code of Practice
Parliamentary procedure: None

Purpose and context

821. The housebuilding industry is open to the idea of having an industry-wide code of practice which will set standards as to the quality of finish of new build homes, and the quality of service which should be given to customers. The Government has seen a draft code which has been produced voluntarily.

822. This clause gives the Secretary of State the power to approve any such code and is written so as to be flexible and allow changes to the code. If the industry does not bring forwards its own code, then the Secretary of State may issue a code itself, and again the clause includes flexibility to revise it or replace it.

823. Where there is a code approved or issued, it must be published, and the New Homes Ombudsman scheme must take it into account in investigating any complaints.

Justification for delegation

824. This power is delegated to the Secretary of State so that a code of practice can be approved or issued if required. Standards of conduct and workmanship/quality can change quickly, and the code of practice should reflect these changes as quickly and efficiently as possible.

825. The Government has not, however, mandated the production of a Code of Practice in the Bill as whilst one would be desirable, it is not considered integral to the role of the New Homes Ombudsman. It is considered to be a good thing to have to ensure consistency across developers, but the scheme would still be able to investigate complaints without one.

Justification for procedure

826. As the code, if published, will cover detailed and technical issues such as workmanship and quality and will not include legislative obligations, we consider it is not appropriate that the making of the code is subject to Parliamentary procedure.

827. Before exercising this power, the Secretary of State must consult the Welsh and Scottish Ministers. This requirement is designed to ensure that they have the opportunity to raise any relevant policy considerations or issues specific to Scotland and Wales in relation to such a Code of Practice before the Code, or

any revision or replacement of it, is issued or approved by the UK Secretary of State.

Clause 128: Construction products - Schedule 11: Construction products regulations

Paragraphs 1 to 15 of Schedule 11 – Power to make regulations

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure and affirmative procedures

Purpose and context

828. Paragraph 1 of Schedule 11 to the Bill creates a power for the Secretary of State to make regulations in relation to the marketing and supply of construction products placed on the United Kingdom market.

829. Paragraph 2 provides the Secretary of State with powers to ensure that construction products are safe. Paragraph 2(1) sets out powers for the Secretary of State to make requirements for the marketing and supply of construction products to help to ensure their safety. Paragraph 2(2) sets out the definition of a safe product.

830. Paragraphs 3 to 7 sets out the powers for the Secretary of State to make regulations that will apply to products subject to designated standards, or where they are required to conform to a technical assessment. For products subject to designated standards this includes the designation of such standards, how such standards may be made and the matters to be included in such standards. For technical assessments, this includes provisions as to the procedure by which and persons by whom technical assessments may be issued. Detail is provided on whom such regulations will be imposed and the requirements they may make.

831. Paragraph 8 provides the Secretary of State with powers such that they can delegate powers to relevant authorities (as defined) to impose requirements on manufacturers, importers and distributors of construction products by notice. This will apply where construction products comply with the regulations as designated products, but nevertheless risk causing death or serious injury to any person. This reflects an existing power contained in the retained EU law[7] as it applies to designated products.

832. Paragraph 9 provides the Secretary of State with powers to include in construction product regulations equivalent provision to that made in the EU Construction Products Regulation 2011 (No 305/2011), the 2019 or 2020

[7] EU Regulation no 305/2011 as amended by the Construction Product (Amendment etc) (EU Exit) Regulations 2019 and the Construction Product (Amendment etc) (EU Exit) Regulations 2020.

Regulations immediately after IP completion day, or in respect of which provision is made in that Regulation or those Regulations immediately after that time.

833. Paragraphs 10 to 14 provide the Secretary of State with similar powers to regulate products defined as safety critical as construction products with designated standards.

834. Paragraph 15 addresses enforcement and provides a power for the Secretary of State to include within construction production regulations provision for relevant authorities (as defined) to secure compliance, through conducting market surveillance, including a right of entry, and an ability to seize and retain products or evidence of non-compliance, and require the provision information. To take appropriate action, to impose requirements by notice, including the withdrawal of a product from the market or recall from persons, to make provision for forfeiture of products, to impose penalties for non-compliance, or obstruction of those carrying out functions under the regulations. There is provision for relevant authorities (as defined) to accept undertakings in relation to compliance, in lieu of taking other enforcement action, together with provision for the creation of sanctions for failure to comply with such undertakings. There is also provision for the creation of criminal and civil offences and for relevant authorities to have the power to prosecute, or impose civil sanctions (including fines) and the provision for imposing penalties for criminal offences.

Justification for delegation

835. The requirements are detailed and technical, such that they are more appropriate for inclusion in secondary legislation.

836. Because they are also technical, they are more likely to be subject to frequent change to reflect technical developments, and it would be more efficient to deal with this in secondary legislation than in primary.

837. The general safety requirement for other products is currently in secondary legislation[8] and if this is appropriate for the general safety requirement for consumer products, it would be inconsistent for a parallel requirement for a fairly narrow class of goods to be in primary legislation.

838. The overall structure of the legislation relating to safety of construction products is contained in secondary legislation; it would be consistent for these additional safety requirements to be contained in secondary legislation. In particular as there is a close relationship between the regime for safety-critical products and the regime for designated-standard products.

839. The existing enforcement regime is contained in secondary legislation and it would be consistent to have the equivalent enforcement powers for safety-critical powers in secondary legislation and would mean the two closely linked regimes can be amended simultaneously rather than requiring primary legislation for one.

[8] General Product Safety Regulations 2005 (2005 No. 1803).

840. We anticipate needing to amend our regulations in response to trade agreements reached with third party countries. We will not want to deal with this in primary legislation each time and can be fleet of foot with the powers in Schedule 11.

841. By the same token, as the UK will be an individual country on the international stage, we anticipate we may wish to adapt our construction safety protocols to accord with changes in approach adopted by our international colleagues. Again, we will want to be able to manage this swiftly and without having to resort to primary legislation each time.

Justification for procedure selected

842. Regulations made under paragraph 10(1) of Schedule 11 to the Bill, (the list of safety critical products) (for the first time only), paragraph 15(5)(a) (the creation of criminal offences) and any provision which repeals or amends the 2011 Regulation or other retained EU law, will be subject to the affirmative resolution procedure in both Houses of Parliament. The decision as to how the new safety critical regime will operate will be of critical importance to the effective regulation of constructions products placed on the UK market. It is important, therefore, that when the scheme is designed initially that this should be subject to full debate to ensure that it is fit for purpose. It is envisaged that further use of this power is likely to be limited to addressing technical and administrative matters. We also consider this is the appropriate level of scrutiny for the creation of criminal offences and for any repealing or amending of retained EU law.

843. The remainder of the regulations and subsequent regulations made under paragraph 10(1) will be subject to the negative procedure in both Houses of Parliament. Taking into account the changing nature of construction products over time, it will be important for the Secretary of State to be able to respond to such changes in a timely and efficient manner. It is therefore considered appropriate the exercise of these powers is made subject to the negative procedure.

Paragraph 16 – Costs

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

844. Paragraph 16 of Schedule 11 gives the Secretary of State the power to make regulations allowing relevant authorities to impose charges 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.

Justification for delegation

845. It is appropriate that these powers are delegated. This detail of the regulation of construction products will all be set out in regulations (with justification set out elsewhere in this document). The charging regime is likely to be subject to regular change updating the value/amount of costs which can be charged. Any such requirement would require amendment to these provisions. it would be cumbersome and inefficient for the charging provisions only to be subject to primary legislation

Justification for procedure selected

846. Regulations made under paragraph 16 will be subject to the negative procedure in both Houses of Parliament. The detail of these regulations will be worked out with the relevant authorities before being made and will, accordingly, not be controversial and we do not consider it is appropriate for them to be required to be subject to debate.

Paragraphs 17 to 19 – Information

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

847. Paragraphs 17 to 19 of Schedule 11 gives the Secretary of State the power to make regulations to allow for the relevant authorities to provide information to other relevant authorities, or others as described in regulations. Similarly, provision can be made in regulations for the sharing by others, as described in regulations, with the relevant authorities. The purpose of this is to allow for the exchange of information where other bodies, through their functions, may obtain information relevant to the regulation of construction products. Likewise, this will also allow the relevant authorities to share information about construction products with other bodies, for whom this information could be relevant to the exercise of their functions. An example, in both instances, would be the sharing of information between relevant authorities and the new building safety regulator. Such information sharing will be necessary for the effective and efficient regulation of construction products on the UK market.

Justification for delegation

848. It is appropriate that these powers are delegated as over time more bodies are likely to be identified with whom the exchange of information will be relevant for the effective and efficient regulation of construction products. This would require amendment to these provisions. As the framework for construction product regulations will be made through regulations, it and would be cumbersome and inefficient for the information sharing provisions only to be subject to primary legislation.

Justification for procedure selected

849. Regulations made under paragraphs 17 to 19 will be subject to the negative procedure in both Houses of Parliament. The detail of these regulations will be worked out with the relevant authorities before being made and will, accordingly, not be controversial and we do not consider it is appropriate for them to be required to be subject to debate.

Paragraph 20(1)(b) – power to make different provision for or in relation to different parts of the United Kingdom

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

850. The purpose of this power is to allow for different provision to be made for different parts of the UK. The power will be used in regulations to carve out NI from any new regulations which would conflict with the operation of the NI Protocol.

Justification for delegation

851. As the construction products regime will be made in regulations, it would not be appropriate to make different provisions for different parts of the UK in primary legislation.

Justification for procedure selected

852. Regulations made under paragraph 20(1)(b) will be subject to the negative resolution procedure in both Houses of Parliament. As this power is likely to be used for technical purposes, such as ensuring a carve out for the NI protocol, it is considered any use is not likely to be controversial or require a more detailed level of Parliamentary scrutiny

Paragraph 21 – power to repeal, amend or re-enact retained EU law and any other enactment other than an Act

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure

Purpose and context

853. Paragraph 21 of Schedule 11 provides a power for the Secretary of State to repeal, amend or re-enact retained EU law (and in particular the 2011

Regulation[9]), and EU derived domestic legislation, in particular the Construction Products regulations 2013 (SI 2013/1387).

854. The purpose of this power is (a) to ensure that in making and amending the relevant regulations, the Secretary of State has the necessary powers to amend existing regulations for construction products deriving from EU law and the supporting enforcement regime which was made under powers conferred by section 2(2) of the European Communities Act 1972 (the Construction Products Regulations 2013), and (b) to make amendments to the existing EU derived legislation to reflect changing UK policy, for example to reflect policy changes regarding the continuity principle. Currently the Secretary of State has very limited powers in relation to this existing legislation.

855. This will also ensure that the regulatory regime for construction products can be revised in the future, to make sure it is fit for purpose as the construction products industry develops over time.

Justification for delegation

856. Currently the regulation of construction products is governed by the retained EU regime, by virtue of the 2011 and 2013 regulations. In NI the regulation of construction products will be governed by EU law (by virtue of the terms of the Northern Ireland Protocol). The Secretary of State has very limited powers to amend these regulations and in order over time to develop a UK only regime, the Secretary of State will need wide ranging powers in relation to these regulations. The 2013 regulations were made under section 2(2) of the European Communities Act 1972 and without a power given in primary legislation, the Secretary of State will be unable to amend these regulations in the future. It is envisaged that these regulations will be amended to reflect a developing UK only regime.

Justification for procedure selected

857. Regulations made under paragraph 21 will be subject to the affirmative resolution procedure in both Houses of Parliament. As the exercise of this power will impact on retained EU law and regulations derived from EU law, it is considered that the use of such power should be subject to debate each time it is used.

Paragraph 22 – power limiting the penalty for criminal offences created under construction product regulations

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

[9] Ibid.

858. The purpose of this power is to allow for clarity and appropriateness for the range of the penalties to be imposed where a party is convicted of a criminal offence created under construction product regulations.

Justification for delegation

859. It is appropriate that these powers are delegated as they are necessary to support the whole construction products framework (the justification for this delegation is set out above). As the detail of the regime will be set out in regulations not yet made it would not be possible for the associated criminal/civil offences and associated penalties, etc, to be set out separately in primary legislation and any changes made to those powers may well require amendment to these provisions. it would be cumbersome and inefficient for these provisions only to be subject to primary legislation

Justification for procedure selected

860. Regulations made under paragraph 22 will be subject to the negative resolution procedure in both Houses of Parliament. This is considered appropriate because the actual creation of criminal offences will be subject to the affirmative procedure (as will the creation of associated penalties at the time); any amendment to the associated penalties will be technical in nature and not likely to be controversial or require a more detailed level of Parliamentary scrutiny.

Clause 129: Amendment of the Regulatory Reform (Fire Safety) Order 2005

Article 21A(3)(g) - Provision of information to residents of domestic premises

Power conferred on: Secretary of State (and Welsh Ministers)
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

861. The Regulatory Reform (Fire Safety) Order 2005 was made under section 1 and section 4(4) of the Regulatory Reform Act 2001 ("RRA"). The RRA has now been repealed and replaced by the Legislative and Regulatory Reform Act 2006 ("LRRA"). The LRRA made specific provision (sections 30(3) and (4)) enabling the Fire Safety Order to continue to have effect and also saved the power in section 1, with section 4(4), to make a "subordinate provisions order". Such an order can make modifications to the provisions in the Fire Safety Order which have been designated as subordinate. These are set out in article 52 of the Fire Safety Order and such an order is subject to affirmative resolution procedure. Prior to the Fire Safety Act 2021 there was no delegated power to amend the Fire Safety Order beyond modifications to the designated subordinate provisions apart from by primary legislation or through the making of a new order under the LRRA. The Fire Safety Act 2021 includes a regulation making power for the limited purpose of changing or clarifying the premises to which the Fire Safety Order applies.

862. Similarly, the intention of the regulation making power in clause 129(5) is to amend the Fire Safety Order for a limited purpose. The intention of article 21A (inserted by clause 129(5)) is to impose a duty on Responsible Persons under the Fire Safety Order to provide information about relevant fire safety matters to residents. The relevant fire safety matters are defined in sub-paragraphs (3)(a) to (g) of article 21A. These include the risks to residents identified by the risk assessment, the preventive and protective measures, the name and address of the Responsible Person, the identity of any person appointed by the Responsible Peron to assist with making or reviewing the risk assessment, the identity of any persons nominated by the Responsible Person under articles 13(3)(b) and 15(1)(b) of the Order and any risks of which the responsible person has been informed under article 22(1)(c) of the Order. Article 21A(3)(g) confers a power on the Secretary of State (for England, and the Welsh Ministers for Wales) to make regulations to extend the fire safety information that Responsible Persons, for a building containing two or more sets of domestic premises, will be required to provide to residents and in addition to specify the format and frequency for which all fire safety information must be provided to residents.

Justification for delegation

863. Over time the timescale, form or information that must be provided may need to adapt. We wish to have flexibility to make such amendments quickly in response to emerging issues relating to fire safety without the need for primary legislation.

Justification for procedure selected

864. The provisions to be included within this power are administrative and procedural in nature. Categories of information of which we are already aware are included on the face of the Bill, however it isn't possible to know what further information may need to be provided in the future or whether the form or timescales for provision will need to be amended. The power is to be exercised under the negative resolution procedure which we consider provides the appropriate level of scrutiny in both Houses of Parliament for statutory instruments of this type.

Article 22A(3)(f): Provision of information to new responsible person

Power conferred on: Secretary of State (and Welsh Ministers)
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

865. The Fire Safety Order was made under section 1 and section 4(4) of the Regulatory Reform Act 2001 ("RRA"). The RRA has now been repealed and replaced by the Legislative and Regulatory Reform Act 2006 ("LRRA"). The LRRA made specific provision (sections 30(3) and (4)) enabling the Fire Safety Order to continue to have effect and also saved the power in section 1, with

section 4(4), to make a “subordinate provisions order”. Such an order can make modifications to the provisions in the Fire Safety Order which have been designated as subordinate. These are set out in article 52 of the Fire Safety Order and such an order is subject to affirmative resolution procedure. Prior to the Fire Safety Act 2021 there was no delegated power to amend the Fire Safety Order beyond modifications to the designated subordinate provisions apart from by primary legislation or through the making of a new order under the LRRA. The Fire Safety Act 2021 includes a regulation making power for the limited purpose of changing or clarifying the premises to which the Fire Safety Order applies.

866. Similarly, the regulation making power in clause 129(7) is intended to amend the Fire Safety Order for a limited purpose. The intention of article 22A (which is inserted by clause 129(7)) is to impose a duty on outgoing Responsible Persons to provide incoming Responsible Persons with relevant fire safety information held by them. Relevant fire safety information is defined in article 22A(3)(a) to (e) as the records kept under article 9(6) of risk assessments and reviews under article 9, the identity of any person appointed by the Responsible Person to assist them with making or reviewing an assessment under article 9, the identity of any other persons who are Responsible Persons in relation to the premises (where known), where the premises consist of or include a higher-risk building, the identity of any other persons who are Accountable Persons in relation to the premises (where known) and any information given under regulation 38 of the Building Regulations 2010 (S.I. 2010/2214) (fire safety information). Article 22A(3)(f) confers a power on the Secretary of State (for England, and the Welsh Ministers for Wales) to make regulations to extend the fire safety information that outgoing Responsible Persons will be required to provide to incoming Responsible Persons and in addition to specify the format and frequency for which all fire safety information must be provided to them.

Justification for delegation

867. Over time the timescale, form or information which must be provided may need to adapt. We wish to have flexibility to make such amendments quickly in response to emerging issues relating to fire safety without needing to amend primary legislation.

Justification for procedure selected

868. The provisions to be included within this power are administrative and procedural in nature. Categories of information of which we are already aware are included on the face of the Bill, however it isn’t possible to know what further information may need to be provided in the future or whether the form or timescales for provision will need to be amended. The power is to be exercised under the negative resolution procedure which we consider provides the appropriate level of scrutiny in both Houses of Parliament for statutory instruments of this type.

Clause 130(2) and (3): Architects: discipline and continuing professional development

Power conferred on: the Architects Registration Board
Power exercised by: guidance
Parliamentary procedure: None

Purpose and context

869. This clause amends the existing power of the Architects Registration Board, the statutory regulator of architects in the UK, at section 9 of the Architects Act 1997 to prescribe the required knowledge and skills for an individual for entry onto the UK Register of Architects. The amendment to section 9(1) of the Architects Act 1997 enables the Architects Registration Board to prescribe "further experience and training", as well as the qualifications and practical experience required for initial registration. This would require all persons on the UK Register of Architects seeking entry or annual re-entry on the UK Register of Architects, to supply the Architects Registration Board with evidence that they have completed the prescribed training or practical experience on an ongoing basis.

Justification for delegation

870. The Architects Registration Board publishes non-legislative General Criteria to prescribe the qualifications and practical experience required for entry on the UK Register of Architects under section 9 of the Architects Act 1997. The General Criteria set out in detail the subject material that must be covered by students gaining qualifications, and the additional knowledge and skills that an individual is expected to have in order to register and practise in the UK.

871. The Architects Registration Board will determine which further experience or training should be assessed and how the assessment should take place within a regime for the ongoing monitoring of professional competence. New section 9(1A) of the Architects Act 1997 requires the Architects Registration Board to consult professional bodies and other stakeholders before introducing a competence regime. The Government does not consider it is appropriate to put the further experience or training on the face of the Bill or in secondary legislation given that prescribing such criteria is primarily administrative as part of a person entering or remaining on the UK Register of Architects. It would not be practicable for the further experience or training to be prescribed via legislation. The Architects Registration Board needs the power to determine and assess what further experience or training are appropriate for a person to be entered or remain on the Register.

Justification for procedure selected

872. The power to prescribe further experience or training is exercised by the Architects Registration Board publishing General Criteria, as is currently the method for prescribing qualifications and practical experience. As the prescription of further experience or training involves detailed administrative assessment and determination, we consider it is inappropriate for such prescription to be subject to scrutiny in Parliament.

Clause 132: Power of Architects Registration Board to charge fees – new section 24A of the Architects Act 1997: "Fees"

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

873. This clause inserts new section 24A into the Architects Act 1997 ("the 1997 Act") to provide a delegated power for the Secretary of State to make provision for the services for which the Architects Registration Board may charge a fee.

874. The 1997 Act prescribes the services for which the Architects Registration Board may charge. The costs of all of the Architects Registration 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.

875. After the end of the EU Exit Transition Period, the Government expects an expansion in the services the Architects Registration Board provides to implement Mutual Recognition Agreements or Memoranda of Understanding relating to the regulation of architects, which the Government expects to substantially expand the Board's existing role in considering and recognising international qualifications, and the Architects Registration Board's function in providing evidence for UK architects registering abroad. This will provide an expedited route for international architects who meet UK standards of architectural qualification to join the UK Register.

876. Once on the Register, these architects will be expected to meet the ongoing competence requirements which will be introduced by the Architects Registration Board for all UK registered architects. As not all registered architects will benefit from these additional services, the Government considers that it is appropriate to have separate fees for these additional services, in order to keep the retention fee down for the architects that do not utilise additional services.

Justification for delegation

877. These powers are necessary in order to allow for the anticipated expansion of the services for which the Architects Registration Board may charge. Given that the nature of the Architects Registration Board's services will be contingent on the content of future agreements, the Government is of the view that prescribing the fees which are required for these services require flexibility that is not appropriate for primary legislation.

878. Regulations will set out the services, or types of services, in respect of which the Architects Registration 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.

Justification for procedure selected

879. Regulations to prescribe the services for which the Board may charge fees under this clause will be subject to the negative procedure in both Houses of Parliament. Regulations made using this procedure would be administrative in nature. The choice of negative procedure is considered to provide for the appropriate level of scrutiny and opportunity for debate, if desired, without requiring a debate on administrative provisions as a matter of course. The Government will engage with and seek views from the sector before introducing any legislation using these powers.

Clause 138(1) and (2): Power of Secretary of State to make consequential provision

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary *procedure: Negative procedure, unless the power is exercised to modify primary legislation then affirmative procedure*

Purpose and context

880. This clause confers on the Secretary of State a regulation-making power to make further consequential amendments which arise from this Bill or regulations made under it other than consequential amendments that could be made by the Welsh Ministers under clause 139) Regulations that make consequential provision may amend, repeal or revoke an enactment. Any regulations that amend or repeal primary legislation are subject to the affirmative procedure. Any other regulations under this clause are subject to the negative procedure.

Justification for delegation and procedure selected

881. This power may only be exercised in connection with a provision of the Bill or regulations made under it. It is not possible to establish in advance all consequential provision that may be required. A power is needed to avoid any legal uncertainty or legal lacunas after the Act comes into force. We consider it is appropriate that amendments to primary legislation will follow the affirmative procedure in both Houses of Parliament, and that amendments to secondary legislation will follow the negative procedure.

Clause 139(1) and (2): Power of Welsh Ministers to make consequential provision

Power conferred on: Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)

Parliamentary *procedure: Negative procedure in the Senedd, unless the power is exercised to modify primary legislation then affirmative procedure*

Purpose and context

882. This clause confers on the Welsh Ministers a regulation-making power to make further consequential amendments which arise from Part 3 of the Bill and clause 129, or regulations made under them. Part 3 and clause 129 generally apply to Wales and deal with subject matter that is devolved in Wales. Regulations that make consequential provision may amend, repeal or revoke an enactment. Any regulations that amend or repeal primary legislation are subject to the affirmative procedure. Any other regulations under this clause are subject to the negative procedure.

Justification for delegation and procedure selected

883. This power may only be exercised in connection with the specified provisions of the Bill or regulations made under them. It is not possible to establish in advance all consequential provision that may be required. A power is needed to avoid any legal uncertainty or legal lacunas after the Act comes into force. We consider it is appropriate that amendments to primary legislation will follow the affirmative procedure in the Senedd, and that amendments to secondary legislation will follow the negative procedure.

Clause 142: Commencement and transitional provision

Power conferred on: Secretary of State or Welsh Ministers
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: None

Purpose and context

884. The Secretary of State is given the power to bring into the force the provisions of this Bill through regulations otherthan the provisions in respect of which the Welsh Ministers have the power to commence (as set out in subsection (4)). As listed in subsection (1) a number of provisions come into force when the Bill becomes law. Subsection (6) and (7)gives the Secretary of State and the Welsh Ministers respectively power to make transitional or saving provision in connection with the commencement of the provisions of the Bill.

Justification for delegation and procedure selected

885. This is a standard clause for commencing the provisions of an Act, and making saving and transitional provisions related to commencement, by regulations and it is usual for this not to be subject to a procedure in Parliament.

Department for Levelling Up, Housing and Communities
20 January 2022