

# Building Safety Bill

---

AMENDMENTS  
TO BE MOVED  
IN GRAND COMMITTEE

---

**Clause 41**

LORD GREENHALGH

Page 51, line 21, at beginning insert “Section 58Z7A of this Act (*Sharing of information between regulatory authorities*) and”

***Member’s explanatory statement***

*This amendment and the next amendment, which are consequential on the Minister’s amendment at page 56, line 22, provide that new section 58Z7A of the Building Act 1984 applies to a person to whom the regulator has delegated registration functions under new Part 2A of that Act as it applies to the regulator.*

Page 51, line 22, leave out “applies” and insert “apply”

***Member’s explanatory statement***

*This amendment is consequential on the previous amendment in the name of the Minister.*

Page 51, line 25, leave out from beginning to “as” in line 26 and insert “The following provisions of this Act apply”

***Member’s explanatory statement***

*This amendment is a drafting change, with the omitted reference (to section 91B of the Building Act 1984) being inserted by the second amendment in the name of the Minister at page 51, line 28.*

Page 51, line 28, at end insert “ –

( ) section 58Z7A (*Sharing of information between regulatory authorities*);”

***Member’s explanatory statement***

*This amendment, which is consequential on the Minister’s amendment at page 56, line 22, provides that new section 58Z7A of the Building Act 1984 applies to a person to whom the Welsh Ministers have delegated registration functions under new Part 2A of that Act as it applies to the Welsh Ministers.*

Page 51, line 28, at end insert “–

- ( ) section 91B (*Cooperation and sharing of information between Welsh Ministers and other authorities*);
- ( ) section 131A (*Application to the Crown*).”

***Member’s explanatory statement***

*This amendment, which is consequential on the first new clause in the name of the Minister after clause 57, enables a person to whom the Welsh Ministers have delegated registration functions (under new Part 2A of the Building Act 1984) to apply to the High Court under new section 131A(5) for a declaration that an act or omission of the Crown is unlawful.*

Page 56, line 22, at end insert –

*“Information sharing*

**58Z7A Sharing of information between regulatory authorities**

- (1) The regulator may disclose information held in connection with a function under this Part to the Welsh Ministers for the purposes of –
  - (a) a function of the regulator under this Part, or
  - (b) a function of the Welsh Ministers under this Part.
- (2) The Welsh Ministers may disclose information held in connection with a function under this Part to the regulator for the purposes of –
  - (a) a function of the Welsh Ministers under this Part, or
  - (b) a function of the regulator under this Part.
- (3) Except as provided by subsection (4), the disclosure of information under this section does not breach –
  - (a) any obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed).
- (4) This section does not authorise a disclosure of information if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the powers conferred by this section).”

***Member’s explanatory statement***

*This amendment provides that regulatory authorities under new Part 2A of the Building Act 1984 (the regulator in relation to England and the Welsh Ministers in relation to Wales) can share information with each other for the purposes of their respective functions under that Part.*

**Clause 52**

LORD GREENHALGH

Page 77, line 9, leave out “public body’s final certificates” and insert “plans certificates, final certificates”

***Member’s explanatory statement***

*This amendment is a drafting change.*

## Schedule 5

LORD GREENHALGH

Page 166, line 28, leave out paragraphs 38 and 39 and insert –

“38 Omit sections 44 and 45 (and the heading before section 44).”

***Member’s explanatory statement***

*This amendment is consequential on the first new clause after clause 57 in the name of the Minister.*

Page 168, line 11, at end insert –

“47A In section 56(3) for the words from “, public body’s final certificates” to the end substitute “and public body’s final certificates.””

***Member’s explanatory statement***

*This amendment is consequential on the repeal of section 16 of the Building Act 1984 provided for by paragraph 20 of Schedule 5.*

Page 170, leave out lines 34 and 35

***Member’s explanatory statement***

*This amendment removes the definition of “the data protection legislation” from new section 91B of the Building Act 1984 with a view to this being inserted into section 126 of that Act (see the Minister’s amendment at page 176, line 8).*

Page 175, line 32, at end insert –

“(ea) section 105C;”

***Member’s explanatory statement***

*See the statement relating to the first amendment to clause 57 in the name of the Minister. This amendment provides that references in inserted section 105C of the Building Act 1984 to work include a material change of use and may include any other specified matter.*

Page 176, line 8, at end insert –

“““the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);””

***Member’s explanatory statement***

*This amendment, which is consequential on the Minister’s amendment at page 56, line 22, inserts a definition of “the data protection legislation” into section 126 of the Building Act 1984 (general interpretation).*

Page 178, line 10, leave out paragraph 89 and insert –

“89(1) The Sustainable and Secure Buildings Act 2004 is amended as follows.

(2) In section 3 omit subsections (8) and (9).

(3) In section 4 omit subsection (4).”

**Member's explanatory statement**

*This amendment is consequential on the amendment of paragraphs 38 and 39 of Schedule 5.*

**Clause 57**

LORD GREENHALGH

Page 79, line 4, leave out from “on” to end of line 5 and insert “certain applications for building control approval etc”

**Member's explanatory statement**

*This amendment and other amendments of this clause extend the power to impose a levy to work other than higher-risk building work, if it relates to residential or mixed-use buildings, and to initial notices, amendment notices and public body's notices (as well as applications for building control approval).*

Page 79, line 7, after “applications” insert “or notices”

**Member's explanatory statement**

*See the statement relating to the first amendment to this clause in the name of the Minister.*

Page 79, line 8, after “applications” insert “or notices”

**Member's explanatory statement**

*See the statement relating to the first amendment to this clause in the name of the Minister.*

Page 79, line 24, leave out from “that” to end of line 31 and insert “, unless the building control authority is given a notification under subsection (5A) in relation to a relevant application or notice (or a relevant application or notice of a specified description), the authority –

- (a) may not take a specified step in relation to the application or notice (for example, may not grant an application, accept a notice or give a specified certificate in relation to works connected with the application or notice), or
  - (b) must take a specified step in relation to the application or notice (for example, must reject a notice).
- (5A) A notification under this section is a notification given by the Secretary of State or designated person –
- (a) that the levy payable in respect of the application or notice has been paid, or
  - (b) that no levy is payable in respect of the application or notice.”

**Member's explanatory statement**

*See the statement relating to the first amendment to this clause in the name of the Minister.*

Page 79, line 37, at end insert –

- “(7A) In this section “relevant application or notice” means –
- (a) an application for building control approval,
  - (b) an initial notice,
  - (c) an amendment notice, or

**Clause 57 - continued**

(d) a public body’s notice,  
relating to a relevant building or proposed relevant building (including any such application or notice relating to work that causes a building to become a relevant building or causes a relevant building to cease to be such a building).”

**Member’s explanatory statement**

*See the statement relating to the first amendment to this clause in the name of the Minister.*

Page 79, line 38, at end insert –

““amendment notice”, “initial notice” and “public body’s notice” have the same meaning as in Part 2 (see section 58);”

**Member’s explanatory statement**

*See the statement relating to the first amendment to this clause in the name of the Minister.*

Page 80, leave out lines 3 to 5 and insert –

““relevant building” means a building in England consisting of or containing –

- (a) one or more dwellings, or
- (b) other accommodation,

(and “accommodation” here includes temporary accommodation, for example in a hotel or hospital);”

**Member’s explanatory statement**

*See the statement relating to the first amendment to this clause in the name of the Minister.*

**After Clause 57**

LORD GREENHALGH

Insert the following new Clause –

**“Crown application**

In Part 5 of the Building Act 1984 before section 132 insert –

**“131A Crown application**

- (1) The following provisions bind the Crown –
  - (a) Part 1 except sections 35B to 37, 39A and 40;
  - (b) Part 2;
  - (c) Part 2A except sections 58I to 58K, 58U, 58V and 58Z4 to 58Z6;
  - (d) Part 4 so far as it relates to a provision within any of the preceding paragraphs.
- (2) No contravention by the Crown of a provision within subsection (1)(a) to (d) makes the Crown criminally liable.
- (3) Subsection (2) does not affect the criminal liability of persons in the service of the Crown.
- (4) Subsection (5) applies where –

**After Clause 57 - continued**

- (a) a contravention of a provision within subsection (1)(a) or (b), or of Part 4 so far as it relates to such a provision, occurs in relation to a building or proposed building for which a local authority is the building control authority, or
  - (b) a contravention of a provision within subsection (1)(c), or of Part 4 so far as it relates to such a provision, occurs in relation to Wales,
- and the Crown would, but for subsection (2), be criminally liable under this Act in respect of the contravention.
- (5) The High Court may, on the application of –
    - (a) the local authority (in a case within subsection (4)(a)), or
    - (b) the Welsh Ministers (in a case within subsection (4)(b)),
 declare unlawful the act or omission constituting the contravention.
  - (6) In this section a reference to a provision includes any instrument made under it.
  - (7) For the application to the Crown of Part 3, and Part 4 so far as it relates to that Part, see section 87.”

**Member’s explanatory statement**

*This new clause makes provision about the application of Parts 1 to 2A of the Building Act 1984, and Part 4 of that Act so far as relating to those Parts, to the Crown.*

Insert the following new Clause –

**“Application to Parliament**

- (1) The Building Act 1984 is amended as follows.
- (2) In section 95 (power to enter premises) after subsection (4) insert –
  - “(5) This section does not apply in relation to the Parliamentary Estate (as defined by section 131B).”
- (3) After section 131A (inserted by section (*Crown application*)) insert –

**“131B Parts 1 and 2 etc: application to Parliament**

- (1) In their application in relation to the Parliamentary Estate, Parts 1 and 2, and Part 4 so far as it relates to those Parts, have effect with the following modifications –
  - (a) sections 35B to 37, 39A and 40 (enforcement etc) do not apply;
  - (b) any reference to the owner or occupier of a building or of any premises is to be read as a reference to –
    - (i) the Corporate Officer of the House of Lords,
    - (ii) the Corporate Officer of the House of Commons, or (as the case may be)
    - (iii) the Corporate Officers acting jointly.
- (2) In the following provisions –
  - “Corporate Officer” means –
    - (a) the Corporate Officer of the House of Lords,
    - (b) the Corporate Officer of the House of Commons, or
    - (c) the Corporate Officers acting jointly;
  - “relevant provision” means –

**After Clause 57 - continued**

- (a) any provision of, or of an instrument made under, Part 1 or 2, or
  - (b) any provision of Part 4 or of an instrument made under Part 4, so far as the provision relates to Part 1 or 2.
- (3) No contravention by a Corporate Officer of a relevant provision makes the Corporate Officer criminally liable.
- (4) Subsection (3) does not affect the criminal liability of relevant members of the House of Lords staff or of the House of Commons staff (as defined by sections 194 and 195 of the Employment Rights Act 1996).
- (5) Where a contravention of a relevant provision occurs which, but for subsection (3), would result in a Corporate Officer being criminally liable, the High Court may, on the application of the local authority, declare unlawful the act or omission constituting the contravention.
- (6) In this section “the Parliamentary Estate” means any building or other premises occupied for the purposes of either House of Parliament.”

**Member’s explanatory statement**

*This new clause makes provision about the application of the Building Act 1984 to Parliament.*

**Clause 116**

LORD GREENHALGH

Page 123, line 39, leave out subsection (2)

**Member’s explanatory statement**

*This amendment removes the provision providing that Part 4 does not apply in relation to the Palace of Westminster.*

**Before Clause 117**

LORD GREENHALGH

Insert the following new Clause –

**“Remediation of certain defects**

- (1) Sections (*Meaning of “relevant building”*) to (*Meeting remediation costs of insolvent landlord*) and Schedule (*Remediation costs under qualifying leases*) make provision in connection with the remediation of relevant defects in relevant buildings.
- (2) In those sections –
- (a) sections (*Meaning of “relevant building”*) to (*Associated persons*) define “relevant building”, “qualifying lease”, “the qualifying time”, “relevant defect” and “associate”;
  - (b) section (*Remediation costs under qualifying leases*) and Schedule (*Remediation costs under qualifying leases*) contain protections for tenants under qualifying leases in respect of costs connected with relevant defects, and impose liabilities on certain landlords;
  - (c) section (*Remediation orders*) makes provision about remediation orders, under which a landlord in a relevant building is required to remedy certain relevant defects;

**Before Clause 117 - continued**

- (d) section (*Remediation contribution orders*) makes provision about remediation contribution orders, under which an associate of a landlord in a relevant building is required to contribute towards the costs of remedying certain relevant defects;
- (e) section (*Meeting remediation costs of insolvent landlord*) makes provision about cases where a company that is a landlord in a relevant building is being wound up, and confers on the court a power to require an associate of the company to contribute to its assets.”

**Member’s explanatory statement**

*This new clause introduces provisions about the remediation of certain defects arising out of works carried out before commencement.*

Insert the following new Clause—

**“Meaning of “relevant building”**

- (1) This section applies for the purposes of sections (*Meaning of “qualifying lease”*) to (*Meeting remediation costs of insolvent landlord*) and Schedule (*Remediation costs under qualifying leases*).
- (2) “Relevant building” means a self-contained building, or self-contained part of a building, in England that contains at least two dwellings and—
  - (a) is at least 11 metres in height,
  - (b) has at least 5 storeys, or
  - (c) is of a description prescribed by regulations made by the Secretary of State.

This is subject to subsection (3).

- (3) “Relevant building” does not include a self-contained building or self-contained part of a building—
  - (a) in relation to which the right to collective enfranchisement (within the meaning of Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993) has been exercised, or
  - (b) which is on commonhold land.
- (4) For the purposes of this section a building is “self-contained” if it is structurally detached.
- (5) For the purposes of this section a part of a building is “self-contained” if—
  - (a) the part constitutes a vertical division of the building,
  - (b) the structure of the building is such that the part could be redeveloped independently of the remainder of the building, and
  - (c) the relevant services provided for occupiers of that part—
    - (i) are provided independently of the relevant services provided for occupiers of the remainder of the building, or
    - (ii) could be so provided without involving the carrying out of any works likely to result in a significant interruption in the provision of any such services for occupiers of the remainder of the building.

**Before Clause 117 - continued**

- (6) In subsection (5) “relevant services” means services provided by means of pipes, cables or other fixed installations.
- (7) The Secretary of State may by regulations make provision supplementing this section, including in particular –
  - (a) provision defining “storey” for the purposes of this section;
  - (b) provision about how the height of a building is to be determined for those purposes.”

***Member’s explanatory statement***

*This new clause defines “relevant building” for the purposes of the provisions relating to the remediation of defects arising out of works carried out before commencement.*

Insert the following new Clause –

**“Meaning of “qualifying lease”**

- (1) This section applies for the purposes of sections (*Remediation costs under qualifying leases*) to (*Meeting remediation costs of insolvent landlord*) and Schedule (*Remediation costs under qualifying leases*).
- (2) A lease is a “qualifying lease” if –
  - (a) it is a long lease of a single dwelling in a relevant building,
  - (b) the tenant under the lease is liable to pay a service charge,
  - (c) the lease was granted before 14 February 2022, and
  - (d) at the beginning of 14 February 2022 (“the qualifying time”) –
    - (i) the dwelling was a relevant tenant’s only or principal home,
    - (ii) a relevant tenant did not own any other dwelling in the United Kingdom, or
    - (iii) a relevant tenant owned only one dwelling in the United Kingdom apart from their interest under the lease.
- (3) Where a dwelling was at the qualifying time let under two or more leases to which subsection (2)(a) and (b) apply, any of those leases which is superior to any of the other leases is not a “qualifying lease”.
- (4) For the purposes of this section –
  - (a) “long lease” means a lease granted for a term of years certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by or to the tenant or by re-entry, forfeiture or otherwise;
  - (b) a person “owns” a dwelling if the person has a freehold interest in it or is a tenant under a long lease of it;
  - (c) “relevant tenant” means a person who, at the qualifying time, is the tenant, or any of the tenants, under the lease mentioned in subsection (2);
  - (d) “service charge” has the meaning given by section 18 of the Landlord and Tenant Act 1985.”

**Member's explanatory statement**

*This new clause defines "qualifying lease" for the purposes of the provisions relating to the remediation of defects arising out of works carried out before commencement.*

Insert the following new Clause –

**"Meaning of "relevant defect"**

- (1) This section applies for the purposes of sections (*Remediation costs under qualifying leases*) to (*Meeting remediation costs of insolvent landlord*) and Schedule (*Remediation costs under qualifying leases*).
- (2) "Relevant defect" means a defect as regards a building that –
  - (a) arises as a result of anything done (or not done), including anything used (or not used), in connection with relevant works, and
  - (b) causes a building safety risk.
- (3) In subsection (2) "relevant works" means works relating to the building (including its initial construction) that were carried out –
  - (a) before completion, if completion occurred in the period of 30 years ending with the coming into force of this section, or
  - (b) by or on behalf of a relevant landlord or management company, after completion and within that period.
- (4) For the purposes of this section –
 

"building safety risk", in relation to a building, means a risk to the safety of people in or about the building arising from –

  - (a) the spread of fire, or
  - (b) the collapse of the building or any part of it;

"completion" and "management company" are defined by regulations made by the Secretary of State;

"relevant landlord" means a landlord under a lease of the building or any part of it."

**Member's explanatory statement**

*This new clause defines "relevant defect" for the purposes of the provisions relating to the remediation of defects arising out of works carried out before commencement.*

Insert the following new Clause –

**"Associated persons**

- (1) For the purposes of sections (*Remediation costs under qualifying leases*) to (*Meeting remediation costs of insolvent landlord*) and Schedule (*Remediation costs under qualifying leases*), a person (A) is associated with another person (B) in the circumstances mentioned in subsections (2) and (3).
- (2) If A is an individual, A is associated with any body corporate of which A was a director at any time in the period of 5 years ending at the qualifying time.
- (3) If A is a body corporate, it is associated with another body corporate (B) if –
  - (a) at any time in the period of 5 years ending at the qualifying time, a person who was a director of A was also a director of B, or
  - (b) at the qualifying time, one of them controlled the other or a third body corporate controlled both of them.

**Before Clause 117 - continued**

Subsections (4) to (6) set out the cases in which a body corporate is regarded as controlling another body corporate.

- (4) A body corporate (X) controls a company (Y) if X possesses or is entitled to acquire—
  - (a) at least half of the issued share capital of Y,
  - (b) such rights as would entitle X to exercise at least half of the votes exercisable in general meetings of Y,
  - (c) such part of the issued share capital of Y as would entitle X to at least half of the amount distributed, if the whole of the income of Y were in fact distributed among the shareholders, or
  - (d) such rights as would, in the event of the winding up of Y or in any other circumstances, entitle it to receive at least half of the assets of Y which would then be available for distribution among the shareholders.
- (5) A body corporate (X) controls a limited liability partnership (Y) if X—
  - (a) holds a majority of the voting rights in Y,
  - (b) is a member of Y and has a right to appoint or remove a majority of other members, or
  - (c) is a member of Y and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in Y.
- (6) A body corporate (X) controls another body corporate (Y) if X has the power, directly or indirectly, to secure that the affairs of Y are conducted in accordance with X's wishes.
- (7) In subsection (5) a reference to "voting rights" is to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.
- (8) In determining whether one body corporate (X) controls another, X is treated as possessing—
  - (a) any rights and powers possessed by a person as nominee for it, and
  - (b) any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph)."

***Member's explanatory statement***

*This new clause defines "associated person" for the purposes of the provisions relating to the remediation of defects arising out of works carried out before commencement.*

Insert the following new Clause—

**"Remediation costs under qualifying leases**

Schedule (*Remediation costs under qualifying leases*)—

- (a) provides that certain service charge amounts relating to relevant defects in a relevant building are not payable, and
- (b) makes provision for the recovery of those amounts from persons who are landlords under leases of the building (or any part of it)."

***Member's explanatory statement***

*This new clause introduces a new Schedule, containing protections for certain leaseholders and others, relating to certain remediation costs, and imposing corresponding liabilities on certain landlords.*

Insert the following new Clause –

**“Remediation orders**

- (1) The Secretary of State may by regulations make provision for and in connection with remediation orders.
- (2) A “remediation order” is an order, made by the First-tier Tribunal, requiring a relevant landlord to remedy specified relevant defects in a specified relevant building by a specified time.
- (3) In this section “relevant landlord”, in relation to a relevant defect in a relevant building, means a landlord under a lease of the building or any part of it who is required, under the lease or by virtue of an enactment, to repair or maintain anything relating to the relevant defect.
- (4) The following persons may apply for a remediation order –
  - (a) the regulator (as defined by section 2);
  - (b) a local authority (as defined by section 29) for the area in which the relevant building is situated;
  - (c) a fire and rescue authority (as defined by section 29) for the area in which the relevant building is situated;
  - (d) any other person prescribed by the regulations.
- (5) In this section “specified” means specified in the order.”

***Member's explanatory statement***

*This new clause confers a power to make provision about remediation orders, which are orders requiring a landlord to remedy relevant defects.*

Insert the following new Clause –

**“Remediation contribution orders**

- (1) The First-tier Tribunal may, on the application of an interested person, make a remediation contribution order in relation to a relevant building if it considers it just and equitable to do so.
- (2) “Remediation contribution order”, in relation to a relevant building, means an order requiring a specified body corporate to make payments to a specified person, for the purpose of meeting costs incurred or to be incurred in remedying relevant defects (or specified relevant defects) relating to the relevant building.
- (3) A body corporate may be specified only if it is associated with a landlord under a lease of the relevant building or any part of it.
- (4) An order may –
  - (a) require the making of payments of a specified amount, or payments of a reasonable amount in respect of the remediation of specified relevant defects (or in respect of specified things done or to be done for the purpose of remedying relevant defects);

**Before Clause 117 - continued**

- (b) require a payment to be made at a specified time, or to be made on demand following the occurrence of a specified event.
- (5) In this section—
- “associated”: see section (*Associated persons*);
  - “interested person”, in relation to a relevant building, means—
    - (a) the regulator (as defined by section 2),
    - (b) a local authority (as defined by section 29) for the area in which the relevant building is situated,
    - (c) a fire and rescue authority (as defined by section 29) for the area in which the relevant building is situated, or
    - (d) a person with a legal or equitable interest in the relevant building or any part of it;
  - “relevant building”: see section (*Meaning of “relevant building”*);
  - “relevant defect”: see section (*Meaning of “relevant defect”*);
  - “specified” means specified in the order.”

***Member’s explanatory statement***

*This new clause confers power on the First-tier Tribunal to make an order requiring a person associated with certain landlords to contribute towards the costs of remedying certain defects in relevant buildings.*

Insert the following new Clause—

**“Meeting remediation costs of insolvent landlord**

- (1) This section applies if, in the course of the winding up of a company which is a landlord under a lease of a relevant building or any part of it, it appears—
- (a) that there are relevant defects relating to the building, and
  - (b) that the company is under an obligation (howsoever imposed) to remedy any of the relevant defects or is liable to make a payment relating to any costs incurred or to be incurred in remedying any of the relevant defects.
- (2) The court may, on the application of the liquidator, by order require a body corporate associated with the company to make such contributions to the company’s assets as the court considers to be just and equitable.
- (3) An order may be made where proceedings for the winding up of the company were commenced before (as well as after) the coming into force of this section.
- (4) In this section—
- “associated”: see section (*Associated persons*);
  - “the court” means a court having jurisdiction to wind up the company;
  - “relevant building”: see section (*Meaning of “relevant building”*);
  - “relevant defect”: see section (*Meaning of “relevant defect”*).”

***Member’s explanatory statement***

*This new clause confers power on a court winding up a company to require a body corporate associated with the company to contribute to the assets of the company.*

Insert the following new Clause—

**“Building industry schemes**

- (1) The Secretary of State may by regulations—
  - (a) establish a scheme, and
  - (b) make provision about the scheme.
- (2) Regulations that establish a scheme must prescribe the descriptions of persons in the building industry who may be members of the scheme (“eligible persons”).
- (3) Where a scheme is established, the Secretary of State must set and publish the criteria that an eligible person must meet in order to become, and remain, a member of the scheme (“membership criteria”).
- (4) Membership criteria may be set for any purpose connected with—
  - (a) securing the safety of people in or about buildings in relation to risks arising from buildings, or
  - (b) improving the standard of buildings.
- (5) The Secretary of State must ensure that a list of members of a scheme is kept and published (and may publish a list of persons who are eligible persons but are not members of a scheme).”

***Member’s explanatory statement***

*This new clause confers power on the Secretary of State to establish one or more building industry schemes.*

Insert the following new Clause—

**“Building industry schemes: supplementary**

- (1) This section supplements section (*Building industry schemes*).
- (2) Regulations may provide that a scheme is to be maintained by—
  - (a) the Secretary of State, or
  - (b) a person designated by the Secretary of State (a “designated person”), acting on behalf of the Secretary of State.
- (3) Regulations may provide for the charging of fees, in connection with—
  - (a) an application for membership;
  - (b) renewal of membership;
  - (c) a review;
  - (d) any other prescribed matter.
- (4) The Secretary of State may publish a document setting out the procedure relating to any of the following—
  - (a) applications for membership of a scheme;
  - (b) the periodic renewal of membership;
  - (c) termination of a person’s membership;
  - (d) the review of any decision relating to a person’s membership;
  - (e) the suspension of a person from membership.
- (5) Membership criteria may be framed by reference to—
  - (a) standards, or a document, from time to time published by any person;

**Before Clause 117 - continued**

- (b) the opinion of the Secretary of State, or a designated person, in relation to any matter.
- (6) Different membership criteria may be set for different purposes.
- (7) In section (*Building industry schemes*) and this section—
  - “building” means a building in England;
  - “building industry”: a reference to persons in the building industry is to persons carrying on, for business purposes, activities connected with the design, construction, management or maintenance of buildings, including persons carrying on activities in relation to construction products (within the meaning of paragraph 24 of Schedule 11) in England;
  - “prescribed” means prescribed by the regulations;
  - “regulations” means regulations under section (*Building industry schemes*);
  - “scheme” means a scheme established under section (*Building industry schemes*);
  - “standard”(except in subsection (5) of this section) is to be read in accordance with section 29.”

***Member’s explanatory statement***

*This new clause makes supplementary provision about building industry schemes.*

Insert the following new Clause—

**“Prohibition on development for prescribed persons**

- (1) The Secretary of State may by regulations prohibit a person of a prescribed description from carrying out development of land in England (or a prescribed description of such development).
- (2) A prohibition may be imposed for any purpose connected with—
  - (a) securing the safety of people in or about buildings in relation to risks arising from buildings, or
  - (b) improving the standard of buildings.
- (3) A prohibition under the regulations applies despite planning permission (or any prescribed description of planning permission) having been granted.
- (4) The regulations may provide that, in prescribed cases, no prescribed certificate under the 1990 Act may be granted (and any purported grant is of no effect).
- (5) The regulations may require a person of a prescribed description to give a notification relating to the proposed beginning of development (and may make provision about the content and form of a notification and the way in which it is to be given).
- (6) The regulations may contain exceptions.
- (7) The regulations may make provision about enforcement, including in particular provision applying (with or without modifications), in relation to a breach of the regulations, any provision of Part 7 of the 1990 Act (enforcement).

**Before Clause 117 - continued**

- (8) For the purposes of this section—
- (a) “the 1990 Act” means the Town and Country Planning Act 1990;
  - (b) a reference to the “beginning” of development is to be read in accordance with section 56(2) of the 1990 Act;
  - (c) “building” means a building in England;
  - (d) “development” has the meaning given by section 55 of the 1990 Act;
  - (e) “planning permission” has the meaning given by section 336 of the 1990 Act;
  - (f) “prescribed” means prescribed by regulations under this section;
  - (g) “standard” is to be read in accordance with section 29.”

***Member’s explanatory statement***

*This new clause confers power on the Secretary of State to prohibit a prescribed person from carrying out development (or certain development).*

Insert the following new Clause—

**“Building control prohibitions**

- (1) The Secretary of State may by regulations impose a building control prohibition, as regards buildings or proposed buildings, in relation to persons of a prescribed description.
- (2) A prohibition may be imposed for any purpose connected with—
  - (a) securing the safety of people in or about buildings in relation to risks arising from buildings, or
  - (b) improving the standard of buildings.
- (3) A “building control prohibition”, in relation to a person, prohibits—
  - (a) the person from applying for building control approval or from depositing plans,
  - (b) the person from giving an initial notice (whether or not jointly with anyone else) or a public body’s notice, public body’s plans certificate or public body’s final certificate,
  - (c) the granting of building control approval to the person,
  - (d) the passing of plans deposited by the person,
  - (e) the acceptance of an initial notice given by the person (whether or not jointly with anyone else) or a public body’s notice, public body’s plans certificate or public body’s final certificate given by the person,
  - (f) the giving of a final certificate in relation to works carried out by the person,
  - (g) the person from giving a prescribed document,
  - (h) the giving of a prescribed document to the person or in respect of works carried out by the person, or
  - (i) the acceptance of any prescribed document given by the person or in respect of works carried out by the person.
- (4) A building control prohibition applies despite any provision made by or under the Building Act 1984.

**Before Clause 117 - continued**

- (5) The regulations may contain exceptions.
- (6) The regulations may provide that anything done in contravention of the regulations is of no effect.
- (7) Any reference in this section to a building or proposed building is to a building or proposed building in England.
- (8) In this section—
  - “building” and “building control approval”, and references to the deposit and passing of plans, are to be read in accordance with Part 1 of the Building Act 1984;
  - “initial notice”, “final certificate”, “public body’s notice”, “public body’s plans certificate” and “public body’s final certificate” have the same meaning as in Part 2 of that Act;
  - “prescribed” means prescribed by regulations under this section;
  - “standard” is to be read in accordance with section 29.”

***Member’s explanatory statement***

*This new clause confers power on the Secretary of State to impose building control prohibitions on prescribed persons.*

Insert the following new Clause—

**“Building liability orders**

- (1) The High Court may make a building liability order if it considers it just and equitable to do so.
- (2) A “building liability order” is an order providing that any relevant liability (or any relevant liability of a specified description) of a body corporate (“the original body”) relating to a specified building is also—
  - (a) a liability of a specified body corporate, or
  - (b) a joint and several liability of two or more specified bodies corporate.
- (3) In this section “relevant liability” means a liability (whether arising before or after commencement) that relates to a building in England and is incurred—
  - (a) under the Defective Premises Act 1972 or section 38 of the Building Act 1984, or
  - (b) as a result of a building safety risk.
- (4) A body corporate may be specified only if it is, or has at any time in the relevant period been, an associate of the original body.
- (5) A building liability order—
  - (a) may be made in respect of a liability of a body corporate that has been dissolved (including where dissolution occurred before commencement);
  - (b) continues to have effect even if the body corporate is dissolved after the making of the order.
- (6) In this section—
  - “associate”: see section (*Building liability orders: associates*);

**Before Clause 117 - continued**

“building safety risk”, in relation to a building, means a risk to the safety of people in or about the building arising from the spread of fire or structural failure;

“commencement” means the time this section comes into force;

“the relevant period” means the period—

- (a) beginning with the beginning of the carrying out of the works in relation to which the relevant liability was incurred, and
- (b) ending with the making of the order;

“specified” means specified in the building liability order.”

**Member’s explanatory statement**

*This new clause confers power on the court to make an order under which certain liabilities relating to buildings in England are imposed on a person associated with the person who is primarily liable.*

Insert the following new Clause—

**“Building liability orders: associates**

- (1) For the purposes of section (*Building liability orders*), a body corporate (A) is associated with another body corporate (B) if—
  - (a) one of them controls the other, or
  - (b) a third body corporate controls both of them.

Subsections (2) to (4) set out the cases in which a body corporate is regarded as controlling another body corporate.

- (2) A body corporate (X) controls a company (Y) if X possesses or is entitled to acquire—
  - (a) at least half of the issued share capital of Y,
  - (b) such rights as would entitle X to exercise at least half of the votes exercisable in general meetings of Y,
  - (c) such part of the issued share capital of Y as would entitle X to at least half of the amount distributed, if the whole of the income of Y were in fact distributed among the shareholders, or
  - (d) such rights as would, in the event of the winding up of Y or in any other circumstances, entitle it to receive at least half of the assets of Y which would then be available for distribution among the shareholders.
- (3) A body corporate (X) controls a limited liability partnership (Y) if X—
  - (a) holds a majority of the voting rights in Y,
  - (b) is a member of Y and has a right to appoint or remove a majority of other members, or
  - (c) is a member of Y and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in Y.
- (4) A body corporate (X) controls another body corporate (Y) if X has the power, directly or indirectly, to secure that the affairs of Y are conducted in accordance with X’s wishes.

**Before Clause 117 - continued**

- (5) In subsection (3) a reference to “voting rights” is to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.
- (6) In determining under any of subsections (2) to (4) whether one body corporate (X) controls another, X is treated as possessing –
- (a) any rights and powers possessed by a person as nominee for it, and
  - (b) any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph).”

***Member’s explanatory statement***

*This new clause sets out who is an associated person for the purposes of the preceding new clause.*

**Clause 120**

LORD GREENHALGH

Page 129, line 4, at end insert –

“(c) the relevant Northern Ireland department.”

***Member’s explanatory statement***

*This amendment places the Secretary of State under a duty to consult the relevant department in Northern Ireland before making arrangements to establish the new homes ombudsman scheme.*

Page 129, line 4, at end insert –

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

***Member’s explanatory statement***

*This amendment explains which department in Northern Ireland is the relevant Northern Ireland department.*

**Before Schedule 9**

LORD GREENHALGH

Insert the following new Schedule –

“SCHEDULE

REMEDATION COSTS UNDER QUALIFYING LEASES

***Interpretation***

1 In this Schedule –

“associated”: see section (*Associated persons*);

**Before Schedule 9 - continued**

“building safety risk” has the meaning given by section (*Meaning of “relevant defect”*);

“qualifying lease”: see section (*Meaning of “qualifying lease”*);

“the qualifying time” has the same meaning as in section (*Meaning of “qualifying lease”*);

“relevant building”: see section (*Meaning of “relevant building”*);

“relevant defect”: see section (*Meaning of “relevant defect”*);

“relevant measure”, in relation to a relevant defect, means a measure taken—

(a) to remedy the relevant defect, or

(b) for the purpose of—

(i) preventing a relevant risk from materialising, or

(ii) reducing the severity of any incident resulting from a relevant risk materialising;

“relevant risk” here means a building safety risk that arises as a result of the relevant defect;

“service charge” has the meaning given by section 18 of the Landlord and Tenant Act 1985.

*No service charge payable for defect for which landlord or associate responsible*

2 (1) No service charge is payable under a qualifying lease in respect of a relevant measure relating to a relevant defect if a relevant landlord—

(a) is responsible for the relevant defect, or

(b) is or has at any time been associated with a person responsible for a relevant defect.

(2) For the purposes of this paragraph a person is “responsible for” a relevant defect if—

(a) in the case of an initial defect, the person was the developer or carried out works relating to the defect;

(b) in any other case, the person carried out works relating to the defect.

(3) In this paragraph—

“developer” means a person who undertakes or commissions the construction or conversion of a building (or part of a building) with a view to granting or disposing of interests in the building or parts of it;

“initial defect” means a relevant defect arising in connection with works carried out before completion (within the meaning of section (*Meaning of “relevant defect”*));

“relevant landlord”, in relation to a qualifying lease, means the landlord under the lease or any superior landlord.

*Paragraph 2: extension of protection to superior leases*

3 (1) This paragraph applies if, as a result of paragraph 2, an amount of service charge (an “unrecoverable amount”) that would otherwise be payable under a qualifying lease in respect of a relevant measure is not payable.

(2) Any superior lease has effect as if any liability of the tenant under the superior lease to pay an amount in respect of the relevant measure (“the relevant amount”) were a liability to pay an amount equal to—

**Before Schedule 9 - continued**

- (a) the relevant amount, minus
- (b) the unrecoverable amount.

(3) In this paragraph “superior lease” means any lease which is superior to the qualifying lease.

*No service charge payable if prescribed conditions are met*

4 (1) No service charge is payable under a qualifying lease in respect of a relevant measure relating to any relevant defect if any prescribed conditions, relating to a relevant landlord or the value of the qualifying lease, are met.

(2) In this paragraph—

“prescribed” means prescribed by regulations made by the Secretary of State;

“relevant landlord” has the same meaning as in paragraph 2.

*Limit on service charge in other cases*

5 (1) A service charge which would otherwise be payable under a qualifying lease in respect of a relevant measure relating to any relevant defect is payable only if (and so far as) the sum of—

- (a) the amount of the service charge, and
- (b) the total amount of relevant service charges which fell due before the service charge fell due,

does not exceed the permitted maximum.

(2) In this paragraph “relevant service charge” means a service charge under the lease in respect of a relevant measure relating to any relevant defect that—

- (a) fell due in the pre-commencement period, or
- (b) falls due after commencement.

(3) In sub-paragraph (2) “the pre-commencement period” means the period—

- (a) beginning 5 years before commencement or, if later, on the day the relevant person became the tenant under the qualifying lease, and
- (b) ending with commencement.

“The relevant person” means the person who was the tenant under the qualifying lease at commencement.

(4) In this paragraph—

“commencement” means the time this paragraph comes into force;

“the permitted maximum”: see paragraph 6.

*Paragraph 5: the permitted maximum*

6 (1) In paragraph 5 “the permitted maximum”, in relation to a qualifying lease, has the following meaning.

(2) The permitted maximum is (subject to sub-paragraphs (3) to (5))—

- (a) if the premises demised by the qualifying lease are in Greater London, £15,000;
- (b) otherwise, £10,000.

**Before Schedule 9 - continued**

- (3) Where the qualifying lease is a shared ownership lease and the tenant's total share was less than 100% at the qualifying time, the permitted maximum is the tenant's total share (as at that time) of what would otherwise be the permitted maximum.
- (4) Where the value of the qualifying lease at the qualifying time is at least £1,000,000 but does not exceed £2,000,000, the permitted maximum is £50,000.
- (5) Where the value of the qualifying lease at the qualifying time exceeds £2,000,000, the permitted maximum is £100,000.
- (6) The Secretary of State may by regulations make provision about the determination of the value of a qualifying lease for the purposes of paragraph 4 and this paragraph.
- (7) In this paragraph "shared ownership lease" and "total share" have the meaning given by section 7 of the Leasehold Reform, Housing and Urban Development Act 1993.

*Annual limit on service charges*

- 7 (1) The Secretary of State may by regulations make provision limiting the total amount of service charges payable in any period of 12 months under a qualifying lease in respect of relevant measures relating to any relevant defect to one fifth of the permitted maximum.
- (2) In this paragraph "the permitted maximum" means the permitted maximum as defined by paragraph 6 in relation to the lease.

*No service charge payable for cladding remediation where tenant was resident*

- 8 (1) No service charge is payable under a qualifying lease in respect of cladding remediation if the condition in section (*Meaning of "qualifying lease"*) (2)(d)(i) (resident tenant) was met at the qualifying time.
- (2) In this paragraph "cladding remediation" has the meaning given by regulations made by the Secretary of State.

*No service charge payable for legal expenses relating to relevant defects*

- 9 (1) No service charge is payable under a qualifying lease in respect of legal expenses relating to the liability (or potential liability) of any person incurred as a result of a relevant defect.
- (2) In this paragraph "legal expenses" means any costs incurred, or to be incurred, in connection with—
  - (a) obtaining legal advice,
  - (b) any proceedings before a court or tribunal,
  - (c) arbitration, or
  - (d) mediation.

*Paragraphs 2 to 9: supplementary*

- 10 (1) This paragraph supplements paragraphs 2 to 9 (the "relevant paragraphs").
- (2) Where a relevant paragraph provides that no service charge is payable under a lease in respect of a thing—
  - (a) no costs incurred or to be incurred in respect of that thing (or in respect of that thing and anything else) —

**Before Schedule 9 - continued**

- (i) are to be regarded for the purposes of the relevant provisions as relevant costs to be taken into account in determining the amount of a service charge payable under the lease, or
  - (ii) are to be met from a relevant reserve fund;
- (b) any amount payable under the lease, or met from a relevant reserve fund, is limited accordingly (and any necessary adjustment must be made by repayment, reduction of subsequent charges or otherwise).
- (3) In this paragraph—
- “the relevant provisions” means sections 18 to 30 of the Landlord and Tenant Act 1985 (service charges) and section 42 of the Landlord and Tenant Act 1987 (service charge contributions to be held on trust);
- “relevant reserve fund” means—
- (a) a trust fund within the meaning of section 42 of the Landlord and Tenant Act 1987,
  - (b) an express trust of a kind mentioned in subsection (9) of that section, comprising payments made by the tenant under the qualifying lease and others, or
  - (c) any other fund comprising payments made by the tenant under the qualifying lease and others, and held for the purposes of meeting costs incurred or to be incurred in respect of the relevant building in question or any part of it (or in respect of that building or part and anything else).

*No increase in service charge for other tenants*

## 11 Where—

- (a) an amount (“the original amount”) would, apart from this Schedule, be payable by a tenant under a lease of premises in a relevant building, and
- (b) a greater amount would (apart from this paragraph) be payable under the lease as a result of this Schedule,

the lease has effect as if the amount payable were the original amount.

*Recovery of service charge amounts from landlords*

12 (1) The Secretary of State may by regulations make provision for and in connection with the recovery, from a prescribed relevant landlord, of any amount that is not recoverable under a lease as a result of this Schedule.

## (2) In this paragraph—

“prescribed” means prescribed by regulations under this paragraph;

“relevant landlord”, in relation to a lease, means the landlord under the lease or any superior landlord.

*Information*

13 (1) The Secretary of State may by regulations make provision requiring a tenant under a qualifying lease to give prescribed information or documents to the landlord under the lease or any superior landlord.

(2) The regulations may provide that the information or documents are to be given in a prescribed way.

(3) In this paragraph “prescribed” means prescribed by the regulations.

**Before Schedule 9 - continued**

*Anti-avoidance*

- 14 A covenant or agreement (whenever made) is void insofar as it purports to exclude or limit any provision made under this Schedule.”

***Member’s explanatory statement***

*This new Schedule contains protections for certain leaseholders and others, relating to certain remediation costs, and imposes corresponding liabilities on certain landlords.*

**Schedule 9**

LORD GREENHALGH

Page 211, line 38, leave out “and the Scottish Ministers” and insert “, the Scottish Ministers and the relevant Northern Ireland department”

***Member’s explanatory statement***

*This amendment is to ensure that the new homes ombudsman scheme includes provision about provision of information to the relevant department in Northern Ireland.*

Page 211, line 38, at end insert –

- “(2) In this paragraph, “the relevant Northern Ireland department” means the Northern Ireland department designated for the purposes of this paragraph by the First Minister and deputy First Minister acting jointly.”

***Member’s explanatory statement***

*This amendment explains which department in Northern Ireland is the relevant Northern Ireland department.*

**Clause 122**

LORD GREENHALGH

Page 130, line 4, after “Scotland” insert “or Northern Ireland”

***Member’s explanatory statement***

*This amendment glosses the meaning of “occupation condition” for homes in Northern Ireland.*

Page 130, line 23, at end insert –

- “(c) in relation to land in Northern Ireland, a legal estate which is –
- (i) an estate in fee simple absolute in possession,
  - (ii) an estate in fee simple in possession subject to a rent payable under a fee farm grant, or
  - (iii) a term of years absolute granted for a term of more than 21 years from the date of the grant.”

***Member’s explanatory statement***

*This amendment provides the meaning of “relevant interest” for land in Northern Ireland.*

Page 130, line 43, at end insert –

“(d) in relation to homes in Northern Ireland, the Northern Ireland department designated for the purposes of this section by the First Minister and deputy First Minister acting jointly.”

***Member’s explanatory statement***

*This amendment confers power on a Northern Ireland department to make regulations about who is a “developer”.*

Page 131, line 3, at end insert –

“(10A) If no Northern Ireland department has been designated for the purposes of this section then, for the purposes of subsection (10), “the relevant national authority” in relation to homes in Northern Ireland is the Executive Office in Northern Ireland.”

***Member’s explanatory statement***

*This amendment is to ensure that the Secretary of State, Welsh Ministers and Scottish Ministers will still be able to make regulations for their own jurisdictions even if there is no Northern Ireland department designated for the purposes of making regulations for homes in Northern Ireland.*

### **Clause 123**

LORD GREENHALGH

Page 131, line 8, leave out from “exercisable” to end of line 10 and insert “–

- (a) in the case of regulations made by the Secretary of State or the Welsh Ministers, by statutory instrument, and
- (b) in the case of regulations made by a Northern Ireland department, by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).”

***Member’s explanatory statement***

*This amendment provides for procedural matters connected to the power conferred on a Northern Ireland department to make regulations.*

Page 131, line 27, at end insert –

“(d) if made by a Northern Ireland department, may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.”

***Member’s explanatory statement***

*This amendment provides for the parliamentary procedure for regulations made by a Northern Ireland department.*

### **Clause 124**

LORD GREENHALGH

Page 132, line 8, at end insert –

“(c) the relevant Northern Ireland department.”

***Member's explanatory statement***

*This amendment places the Secretary of State under a duty to consult the relevant department in Northern Ireland before making regulations about the new homes ombudsman scheme.*

Page 132, line 31, at end insert –

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

***Member's explanatory statement***

*This amendment explains which department in Northern Ireland is the relevant Northern Ireland department.*

**Clause 126**

LORD GREENHALGH

Page 133, line 5, leave out “and the Scottish Ministers” and insert “, the Scottish Ministers and the relevant Northern Ireland department”

***Member's explanatory statement***

*This amendment places the Secretary of State under a duty to consult the relevant department in Northern Ireland about the code of practice.*

Page 133, line 8, at end insert –

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

***Member's explanatory statement***

*This amendment explains which department in Northern Ireland is the relevant Northern Ireland department.*

**After Clause 128**

LORD GREENHALGH

Insert the following new Clause –

**“Liability for failure to comply with construction product requirements**

- (1) This section applies where Conditions A to D are met.
- (2) Condition A is that, at any time after the coming into force of this section, a person (“the defaulter”) fails to comply, in relation to a construction product, with a construction product requirement applicable to that person at that time.
- (3) Condition B is that, after Condition A is met, the construction product is installed in, or applied or attached to, a relevant building in the course of works carried out in relation to the building.

In this section “relevant building” means –

**After Clause 128 - continued**

- (a) a building which consists of a dwelling, or
  - (b) a building which contains one or more dwellings.
- (4) Condition C is that, in the course of those works or at any time after their completion—
- (a) in a case where the relevant building consists of a dwelling, the building becomes unfit for habitation, or
  - (b) in a case where the relevant building contains one or more dwellings, a dwelling contained in the building becomes unfit for habitation.
- (5) Condition D is that the failure to comply referred to in subsection (2) was the cause, or one of the causes, of the building or dwelling becoming unfit for habitation.
- (6) The defaulter is liable to pay damages to a person with a relevant interest for personal injury, damage to property or economic loss suffered by that person as a result of the facts referred to in subsection (4)(a) or (b).
- (7) For the purposes of section 10B of the Limitation Act 1980, the right of action that a person has by virtue of this section is to be regarded as having accrued—
- (a) in a case where the works referred to in subsection (3) are carried out in the construction of the relevant building, when the construction is completed, and
  - (b) in any other case, when the works are completed.
- (8) In this section—
- “construction product” has the same meaning as in construction product regulations;
  - “construction product regulations” means regulations under paragraph 1 of Schedule 11;
  - “construction product requirement” means a requirement under—
    - (a) construction product regulations;
    - (b) Regulation (EU) No. 305/2011 (regulation laying down harmonised conditions for the marketing of construction products);
    - (c) the Construction Products (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/465);
  - “relevant building” has the meaning given by subsection (3);
  - “relevant interest” means—
    - (a) in relation to a building which consists of a dwelling, a legal or equitable interest in the building, and
    - (b) in relation to a building which contains one or more dwellings, a legal or equitable interest in the building or any dwelling contained in it;
  - “requirement” includes a prohibition or restriction.”

***Member’s explanatory statement***

*This new clause makes provision for a new right of action where breach of regulations relating to construction products causes, or is a factor in, a building or dwelling becoming unfit for habitation.*

Insert the following new Clause—

**“Liability relating to cladding products**

- (1) This section applies where Conditions A to D are met.
- (2) Condition A is that, at any time before the coming into force of this section—
  - (a) a person fails to comply, in relation to any cladding product, with a cladding product requirement applicable to that person at that time,
  - (b) a person who markets or supplies a cladding product makes a misleading statement in relation to it, or
  - (c) a person manufactures a cladding product that is inherently defective.
- (3) Condition B is that, after Condition A has been met, the cladding product is attached to, or included in, the external wall of a relevant building in the course of works carried out in relation to the building.

In this section “relevant building” means—

- (a) a building which consists of a dwelling, or
  - (b) a building which contains one or more dwellings.
- (4) Condition C is that, in the course of those works or at any time after their completion—
  - (a) in a case where the relevant building consists of a dwelling, the building becomes unfit for habitation, or
  - (b) in a case where the relevant building contains one or more dwellings, a dwelling contained in the building becomes unfit for habitation.
- (5) Condition D is that the facts referred to in subsection (2)(a), (b) or (c) were the cause, or one of the causes, of the building or dwelling becoming unfit for habitation.
- (6) The person referred to in subsection (2)(a), (b) or (c) is liable to pay damages to a person with a relevant interest for personal injury, damage to property or economic loss suffered by that person as a result of the facts referred to subsection (4)(a) or (b).
- (7) For the purposes of section 10B of the Limitation Act 1980, the right of action that a person has by virtue of this section is to be regarded as having accrued—
  - (a) in a case where the works referred to in subsection (3) are carried out in the construction of the relevant building, when the construction is completed, and
  - (b) in any other case, when the works are completed.
- (8) In subsection (2)(a) “cladding product requirement” means a requirement relating to a cladding product under—
  - (a) in relation to a time before IP completion day, the 1988 Directive or the 2011 Regulation as it had effect in EU law at that time, or
  - (b) in relation to a time after IP completion day—
    - (i) the 2011 Regulation as it had effect in the law of England and Wales at that time, or
    - (ii) the 2019 Regulations.
- (9) In this section—
 

“the 1988 Directive” means Council Directive of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (89/106/EEC);

**After Clause 128 - continued**

“the 2011 Regulation” means Regulation (EU) No. 305/2011 (regulation laying down harmonised conditions for the marketing of construction products);

“the 2019 Regulations” means the Construction Products (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/465);

“cladding product” means a cladding system or any component of a cladding system;

“external wall”, in relation to a building, includes any part of a roof pitched at an angle of more than 70 degrees to the horizontal if that part of the roof adjoins a space within the building to which persons have access otherwise than for the purpose of carrying out repairs or maintenance;

to “make a misleading statement”, in relation to a cladding product, has such meaning as the Secretary of State may by regulations prescribe;

“relevant building” has the meaning given by subsection (3);

“relevant interest” means –

- (a) in relation to a building which consists of a dwelling, a legal or equitable interest in the building, and
- (b) in relation to a building which contains one or more dwellings, a legal or equitable interest in the building or any dwelling contained in it;

“requirement” includes a prohibition or restriction.”

***Member’s explanatory statement***

*This new clause provides for a right of action where historic defaults relating to cladding cause, or are a factor in, a building or dwelling becoming unfit for habitation.*

Insert the following new Clause –

**“Liability for failures relating to construction products: limitation**

- (1) The Limitation Act 1980 is amended as follows.
- (2) After section 10A insert –

**“10B Special time limit for actions relating to construction products**

- (1) Where by virtue of section (*Liability for failure to comply with construction product requirements*) of the Building Safety Act 2022 a person becomes entitled to bring an action against any person, the action shall not be brought after the expiration of 15 years from the date on which the right of action accrued.
- (2) Where by virtue of section (*Liability relating to cladding products*) of the Building Safety Act 2022 a person becomes entitled to bring an action against another person, the action shall not be brought after –
  - (a) if the right of action accrued before the commencement date, the expiration of the period of 30 years from the date on which it accrued, and
  - (b) if the right of action accrued on or after the commencement date, the expiration of the period of 15 years beginning with the date on which it accrued.

**After Clause 128 - continued**

- (3) In a case where—
- (a) by virtue of section (*Liability relating to cladding products*) of the Building Safety Act 2022 a person is entitled to bring an action against another person,
  - (b) the right of action accrued before the commencement date, and
  - (c) the expiration of the period of 30 years beginning with the date on which the right of action accrued falls in the year beginning with the commencement date,
- subsection (2)(a) has effect as if it referred to the expiration of that year.
- (4) In subsections (2) and (3) “the commencement date” is the day on which section (*Liability relating to cladding products*) of the Building Safety Act 2022 came into force.
- (5) No other period of limitation prescribed by Part 1 of this Act applies in relation to an action referred to in subsection (1) and (2).
- (6) Sections 28, 32 and 35 of this Act apply in relation to an action referred to subsection (1) and (2), but otherwise Parts 2 and 3 of this Act (except sections 37 and 38), do not apply for the purposes of this section.”

***Member’s explanatory statement***

*This amendment provides for the limitation periods for the rights of action created by the previous two new clauses.*

Insert the following new Clause—

**“Costs contribution notices**

- (1) The Secretary of State may by regulations confer a power on the Secretary of State to impose a costs contribution requirement on a person (“the defaulter”) in a case where Conditions A to D are met.
- (2) Condition A is that the defaulter has been convicted of a relevant offence under construction product regulations.

A “relevant offence” is an offence consisting of a failure to comply, in relation to a construction product, with a construction product requirement applicable to that person.

- (3) Condition B is that, after the failure to comply referred to in subsection (2), the construction product is installed in, or applied or attached to, a relevant building in the course of works carried out in relation to the building.

In this section “relevant building” means—

- (a) a building which consists of a dwelling, or
  - (b) a building which contains one or more dwellings.
- (4) Condition C is that, in the course of those works or at any time after their completion—
    - (a) in a case where the relevant building consists of a dwelling, the building becomes unfit for habitation, or
    - (b) in a case where the relevant building contains one or more dwellings, a dwelling contained in the building becomes unfit for habitation.

**After Clause 128 - continued**

- (5) Condition D is that the failure to comply referred to in subsection (2) was the cause, or one of the causes, of the building or dwelling becoming unfit for habitation.
- (6) The regulations may specify other conditions which must be met before the Secretary of State may impose a costs contribution requirement on a person.
- (7) A “costs contribution requirement” requires the defaulter to pay to a person with a relevant interest such amount as the Secretary of State considers just and equitable in respect of the costs that the person has reasonably incurred, or in the view of the Secretary of State is likely to reasonably incur, in respect of works to make the building or dwelling fit for habitation.
- (8) The regulations must provide for a costs contribution requirement to be imposed by means of a notice (a “costs contribution notice”).
- (9) For more about the provision that may be made by regulations under this section, see Schedule (*Costs contributions notices*).
- (10) In this section—
  - “construction product” has the same meaning as in construction product regulations;
  - “construction product regulations” means regulations under paragraph 1 of Schedule 11;
  - “construction product requirement” means a requirement under—
    - (a) construction product regulations;
    - (b) Regulation (EU) No. 305/2011 (regulation laying down harmonised conditions for the marketing of construction products);
    - (c) the Construction Products (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/465);
  - “relevant building” has the meaning given in subsection (3);
  - “relevant interest” means—
    - (a) in a case where the building consists of a dwelling, a legal or equitable interest in the building, and
    - (b) in a case where the building contains one or more dwellings, a legal or equitable interest in—
      - (i) the building, or
      - (ii) any dwelling contained in the building;
  - “relevant offence” has the meaning given in subsection (2);
  - “requirement” includes a prohibition or restriction.”

***Member’s explanatory statement***

*This new clause confers a regulation-making power authorising the Secretary of State by notice to require persons convicted of certain offences relating to breaches of construction product regulations to contribute to the costs of making a dwelling or building fit for habitation.*

### Schedule 11

LORD GREENHALGH

Page 222, line 23, leave out “sub-paragraph (2) does” and insert “the requirements specified in sub-paragraph (2) do”

***Member’s explanatory statement***

*This amendment is to ensure a statutory instrument may contain both construction product regulations and regulations under the new clause relating to cost contributions notices provided that the instrument is made subject to the draft affirmative procedure.*

### After Schedule 11

LORD GREENHALGH

Insert the following new Schedule –

“SCHEDULE

COSTS CONTRIBUTION NOTICES

*Introduction*

1 This Schedule is about further provision that may be made by regulations under section (*Costs contribution notices*) (“the regulations”).

*Applications*

- 2 (1) The regulations may make provision for the Secretary of State to impose a costs contribution requirement –
- (a) on application, or
  - (b) otherwise than on application.
- (2) Regulations under sub-paragraph (1)(a) may in particular include provision as to –
- (a) who may apply;
  - (b) the procedure for applications;
  - (c) time-limits on applications.

*Assessments*

- 3 (1) The regulations may make provision for the appointment by the Secretary of State of persons to assess –
- (a) whether the conditions for the imposition of a costs contribution requirement are met;
  - (b) the works required to make a building or dwelling fit for habitation;
  - (c) the costs that any person with a relevant interest has reasonably incurred or is likely to reasonably incur in respect of such works;
  - (d) the amount that a person should be required to pay under a costs contribution requirement.
- (2) Regulations under sub-paragraph (1) may include provision about the criteria to met by a person before they may be appointed as an assessor.

**After Schedule 11 - continued**

- 4 (1) The regulations may make provision about assessments, including provision conferring power on an assessor to require that persons provide such information as the assessor may reasonably require for the purposes of an assessment.
- (2) Regulations under sub-paragraph (1) may include provision for criminal offences relating to a failure to provide information, or to the provision of false or misleading information.
- (3) An offence under sub-paragraph (2) must be one that is punishable only on summary conviction with a fine (which, in Scotland and Northern Ireland, must not exceed level 5 on the standard scale).
- 5 The regulations may include provision for a costs contribution notice to require a person on whom it is imposed to pay an amount specified in the notice to the Secretary of State in respect of the costs of an assessment.

*Decision to impose notice*

- 6 The regulations may make provision as to the matters which may or must be taken into account by the Secretary of State in determining—
- (a) whether to impose a costs contribution requirement;
  - (b) on whom, and in favour of whom, to impose a costs contribution requirement;
  - (c) the amount required to be paid by any person under a costs contribution requirement.
- 7 (1) The regulations may make provision about how a costs contribution requirement relates to other obligations.
- (2) The regulations may in particular make provision to secure that, taking a costs contribution requirement together with other obligations—
- (a) a person does not incur liability more than once in respect of the same costs;
  - (b) a person is not entitled to be reimbursed more than once for the same costs.
- (3) That may in particular include making provision preventing a person to whom any amount is payable under a costs contribution requirement from pursuing any other legal remedy.

*Form of notice and methods of service*

- 8 The regulations may make provision requiring that a costs contribution notice—
- (a) be given in a specified form;
  - (b) contain specified information.
- 9 The regulations may make provision about service of a costs contribution notice including—
- (a) how a notice is to be served;
  - (b) when a notice is to be taken as having been served;
  - (c) the persons on whom a notice must be served.

*Review and appeals*

**After Schedule 11 - continued**

- 10 The regulations may make provision for persons to apply to the Secretary of State for a review of a costs contribution notice.
- 11 The regulations may make provision for appeals against—
- (a) a refusal by the Secretary of State to review a costs contribution notice;
  - (b) the outcome of that review.
- 12 Regulations under paragraph 10 or 11 may in particular include provision suspending a requirement to pay an amount due under a costs contribution notice pending the determination or withdrawal of a review or appeal.

*Enforcement*

- 13 The regulations may make provision for the enforcement of a costs contribution notice by a person to whom any amount is payable under the notice.”

***Member’s explanatory statement***

*This new Schedule sets out further provision which may be made by regulations made under the new clause relating to cost contributions notices.*

**After Clause 133**

LORD FOSTER OF BATH

Insert the following new Clause—

**“Report on impact of climate change on building safety**

In section 56 of the Climate Change Act 2008 insert—

- “(1A) A report published pursuant to subsection (1) must include an assessment by the Secretary of State of the number and location of buildings whose safety is threatened by—
- (a) coastal erosion,
  - (b) soil erosion,
  - (c) flooding, and
  - (d) any other threat caused by climate change.””

**Clause 135**

LORD GREENHALGH

Page 142, line 20, at end insert—

““building function” has the meaning given by section 3;”

***Member’s explanatory statement***

*This amendment defines “building function” for the purposes of Clause 135.*

**Clause 137**

LORD GREENHALGH

Page 143, line 2, at end insert –

“(ba) sections (*Remediation of certain defects*) to (*Meeting remediation costs of insolvent landlord*) and Schedule (*Remediation costs under qualifying leases*) (remediation of certain defects);”

***Member’s explanatory statement***

*This amendment provides for the new clauses and Schedule relating to the remediation of certain defects to bind the Crown.*

**After Clause 137**

LORD GREENHALGH

Insert the following new Clause –

**“Application to Parliament**

- (1) The following provisions do not apply in relation to the Parliamentary Estate –
  - (a) sections 101, 102 and 105 (compliance notices under Part 4);
  - (b) paragraphs 1 to 3 of Schedule 2 (powers of entry of authorised officers).
- (2) If the Palace of Westminster (or any part of it) is a higher-risk building within the meaning of Part 4, for the purposes of that Part the accountable persons for the building are the Corporate Officer of the House of Lords and the Corporate Officer of the House of Commons, acting jointly.
- (3) No contravention by a Corporate Officer of a provision made by or under Part 2 or 4 makes the Corporate Officer criminally liable.
- (4) Subsection (3) does not affect the criminal liability of relevant members of the House of Lords staff or of the House of Commons staff (as defined by sections 194 and 195 of the Employment Rights Act 1996).
- (5) In subsection (3) “Corporate Officer” means –
  - (a) the Corporate Officer of the House of Lords,
  - (b) the Corporate Officer of the House of Commons, or
  - (c) the Corporate Officers acting jointly
- (6) In this section “Parliamentary Estate” means any building or other premises occupied for the purposes of either House of Parliament.”

***Member’s explanatory statement***

*This new clause makes provision about the application of Parts 2 and 4 to Parliament.*

**Clause 140**

LORD GREENHALGH

Page 144, line 19, after “71” insert “, (*Meaning of “relevant building”*)(2)(c), (*Remediation orders*)”

**Member's explanatory statement**

*This amendment provides for the draft affirmative procedure to apply to certain regulations.*

Page 144, line 21, at end insert “or paragraph 4, 12 or 13 of Schedule (*Remediation costs under qualifying leases*),”

**Member's explanatory statement**

*This amendment provides for the draft affirmative procedure to apply to certain regulations.*

Page 144, line 30, at end insert –

“(g) regulations under section (*Costs contribution notices*),”.

**Member's explanatory statement**

*This amendment makes provision for regulations under the new clause relating to costs contribution notices to be subject to the draft affirmative procedure.*

**Clause 141**

LORD GREENHALGH

Page 144, line 41, at end insert –

“(ba) sections 120 to 127 and Schedule 9 (*new homes ombudsman scheme*);”

**Member's explanatory statement**

*This amendment provides for certain provisions about the new homes ombudsman scheme to form part of the law of England and Wales, Scotland and Northern Ireland.*

Page 145, line 4, leave out subsection (3) and insert –

“(3) Section 2(2) and Schedule 1 (amendments of the Health and Safety at Work etc Act 1974) extend to England and Wales and Scotland.”

**Member's explanatory statement**

*This amendment is consequential on the amendment to page 144, line 41 that appears in the Minister's name, providing for the new homes provisions to form part of the law of England and Wales, Scotland and Northern Ireland.*

**Clause 142**

LORD GREENHALGH

Page 145, line 32, at end insert –

“(ca) section (*Liability relating to cladding products*) and section (*Liability for failures relating to construction products: limitation*);”.

**Member's explanatory statement**

*This amendment provides for the clauses mentioned to come into force two months after Royal Assent.*

Page 145, line 32, at end insert –

“(cb) section (*Costs contribution notices*) and Schedule (*Costs contribution notices*) (*costs contribution notices*);”

***Member's explanatory statement***

*This amendment provides for the new clause and Schedule relating to costs contribution notices to come into force two months after Royal Assent.*

Page 146, line 18, leave out “, 39 and 86 to 88” and insert “and 87 to 89”

***Member's explanatory statement***

*This amendment is consequential on the first amendment of Schedule 5 in the name of the Minister (and also corrects the numbering of the paragraphs referred to).*

# Building Safety Bill

---

AMENDMENTS  
TO BE MOVED  
IN GRAND COMMITTEE

---

*14 February 2022*

---