

# Building Safety Bill

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AMENDMENTS  
TO BE MOVED  
IN GRAND COMMITTEE

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**Clause 30**

LORD BLENCATHRA

Page 18, line 15, at end insert –

“or is below 18 metres and poses a risk by reason of its construction material or lack of adequate fire escapes or fire detection systems as may be specified in a regulations made by the Secretary of State.”

**Clause 38**

LORD BLENCATHRA

Page 39, leave out lines 21 to 23

Page 39, line 27, leave out “1” and insert “4”

Page 39, line 28, at end insert –

“(5) But, where the person is a body corporate, that person is liable on conviction on indictment to a fine which equals the cost of the construction work in respect of which the offence was committed, and liable to a further fine of twice the previous fine for each month during which the default continues after the initial conviction.”

**Clause 57**

LORD BLENCATHRA

Page 79, line 21, at end insert –

“(3A) For the purposes of subsection (3)(a), the amount of the levy may be –  
(a) no more than £500 million for each property for which the person in specified in subsection (3)(b) is responsible, or  
(b) no more than 10% of the annual profits of that person.”

**Clause 57 - continued**

Page 80, line 2, at end insert –

““person” includes bodies corporate including a holding company or special purpose vehicle.”

**Clause 62**

LORD BLENCATHRA

Page 83, line 5, at end insert –

“or is below 18 metres and poses a risk by reason of its construction material or lack of adequate fire escapes or fire detection systems as may be specified in a regulations made by the Secretary of State.”

**After Clause 72**

LORD BEST

Insert the following new Clause –

**“Appointment of third parties**

- (1) This section applies where –
  - (a) a RTM company within the meaning of section 113, Commonhold and Leasehold Reform Act 2002,
  - (b) a body corporate of whatever description where the majority of the shares are held by leaseholders of dwellings, or
  - (c) a body corporate of whatever description which is limited by guarantee and the members of that company are also leaseholders of dwellings,

is either the accountable person or principal accountable person.
- (2) Where this section applies, notwithstanding any provisions of the Memorandum or Articles of Association or any rule of law to the contrary, the company may appoint a third party to discharge all the functions of the accountable person or the principal accountable person who will assume all duties, powers, liabilities and penalties under this Act in place of the company, and this Act is to have effect as though references to the Accountable Person or Principal Accountable Person were references to the third party appointed under this section.
- (3) If such a person is appointed then the company is empowered to re-charge and apportion the costs charged by such a person as if they were a service charge under the leases of the dwellings.
- (4) Such charges will, for all purposes, be deemed to be service charges within the meaning of section 18 of the Landlord and Tenant Act 1985, save that the provisions of sections 20 and 20ZA of the Landlord and Tenant Act 1985 do not apply.
- (5) The Secretary of State may by regulations impose conditions which must be satisfied before an appointment can be made under subsection (2).
- (6) Without prejudice to the generality of subsection (5), those regulations may include –

**After Clause 72 - continued**

- (a) provision for a minimum level of professional qualification to be held by the third party,
- (b) provision for minimum levels of professional indemnity provision.”

***Member’s explanatory statement***

*This provision would enable leaseholder-owned or controlled companies to appoint an external professional to discharge the functions of the Accountable Person or Principal Accountable Person and for the costs of the same to be recoverable (and regulated) as if they were a service charge under the lease.*

Insert the following new Clause –

**“Appointment of third parties**

- (1) This section applies where:
  - (a) a Right to Manage company within the meaning of section 113, Commonhold and Leasehold Reform Act 2002;
  - (b) a body corporate of whatever description where the majority of the shares are held by leaseholders of dwellings; or,
  - (c) a body corporate of whatever description which is limited by guarantee and the members of that company are also leaseholders of dwellings;

is either the Accountable Person or Principal Accountable Person

2.If subsection (1) applies then, notwithstanding any provisions of the Memorandum or Articles of Association or any rule of law to the contrary, it shall be lawful for the company to appoint a third party who will discharge all the functions of the Accountable Person or the Principal Accountable Person and who will assume all duties, powers, liabilities and penalties under this Act in place of the company and this Act shall be read so that references to the Accountable Person or Principal Accountable Person are references to the third party appointed under this section.

3.If such a person is appointed then the company is empowered to re-charge and apportion the costs charged by such a person as if they were a service charge under the leases of the dwellings.

4.Such charges will, for all purposes, be deemed to be service charges within the meaning of section 18, Landlord and Tenant Act 1985, save that the provisions of sections 20 and 20ZA, Landlord and Tenant Act 1985 shall not apply.

5.The Secretary of State may, by regulations, impose conditions which must be satisfied before an appointment can be made under subsection (2).

6.Without prejudice to the generality of subsection (5), those regulations may include

- (a) provision for a minimum level of professional qualification to be held by the third party; and,
- (b) provision for minimum levels of professional indemnity provision.”

**Clause 93**

LORD BLENCATHRA

Page 102, line 8, at end insert “after consulting the residents”

**Clause 93 - continued**

Page 102, line 37, leave out subsection (5)

Page 103, line 8, at end insert –

- “(c) make provision to allow residents to appeal to the regulator about any aspect of the strategy, and
- (d) make provision for penalties to be imposed on any accountable person who has failed to properly consult residents.”

**After Clause 94**

LORD BLENCATHRA

Insert the following new Clause –

**“Contravention of requests for further information**

- (1) This section applies where it appears to the resident that the accountable person has failed to provide the information requested under section 94 within a reasonable time.
- (2) The resident may give the accountable person an information notice.
- (3) An “information notice” is a notice that –
  - (a) specifies the information that has been requested under section 94, and
  - (b) specifies a reasonable time for the accountable person to provide that information.
- (4) Where it appears to the resident that the accountable person has failed to provide the information within the time specified in the notice, the information may require the accountable person to pay a prescribed sum.”

**Clause 95**

LORD BLENCATHRA

Page 104, line 14, at end insert –

- “(d) providing penalties where a principal accountable person fails to set up a proper complaints procedure or fails to do so in a reasonable time.”

**Clause 97**

LORD BLENCATHRA

Page 105, line 31, leave out paragraphs (a) and (b) and insert “items as defined in regulations made by the Regulator or appropriate national authority.”

**Clause 98**

LORD BLENCATHRA

Page 106, line 28, leave out “county court” and insert “regulator”

**Clause 98 - continued**

Page 106, line 32, at end insert –

“(7A) The regulator may, on an application made by a resident who has been given a contravention notice, give a final determination about the validity of the contravention notice and any sums payable.”

**Clause 99**

LORD BLENCATHRA

Page 107, line 24, leave out “county court” and insert “regulator”

Page 107, line 32, leave out “county court” and insert “regulator”

**Schedule 8**

LORD YOUNG OF COOKHAM

Page 197, line 7, at end insert –

“(1A) Such a charge is for all purposes to be treated as a service charge within the meaning of section 18 of the Landlord and Tenant Act 1985.”

***Member’s explanatory statement***

*This amendment, along with others to Schedule 8, preserves the existing Building Safety Charge but treats it as a service charge due under the lease to be demanded and regulated in the same manner as existing service charges. This is to ensure that there are not two parallel sets of demands, accounts etc, one for the normal service charge and one for the building safety charge.*

Page 198, line 6, leave out from beginning to end of line 10 on page 198

Page 200, line 1, leave out from beginning to end of line 29 on page 202

LORD BLENCATHRA

Page 201, line 6, at end insert –

“(aa) only if they are below a maximum as specified in regulations made by the Secretary of State, and”

LORD YOUNG OF COOKHAM

Page 203, line 16, leave out from beginning to end of line 19 on page 208

**After Schedule 11**

THE EARL OF LYTTON

Insert the following new Schedule –

“FIRE HAZARD REMEDIATION SCHEME

*Duty to establish the scheme*

**After Schedule 11 - continued**

- 1 (1) The Secretary of State must establish, or make arrangements for the establishment of, a Fire Hazard Remediation Scheme (“the FHRS”).
- (2) The purpose of the FHRS must be to ensure that residential blocks of flats with fire hazards are made safe –
  - (a) speedily, efficiently, effectively and proportionately,
  - (b) without recourse to lengthy and expensive legal proceedings,
  - (c) without cost to leaseholders or occupiers, and
  - (d) in accordance with the perpetrator pays principle.
- (3) For the purposes of this Schedule “the perpetrator pays principle” is the principle that –
  - (a) so far as reasonably practicable, remediation costs for residential blocks of flats with fire hazards should be met by the persons responsible for the hazards, and
  - (b) where that is not reasonably practicable, costs should so far as reasonably practicable be met by the construction industry.

*Scope of the scheme*

- 2 (1) The FHRS must be framed so as to apply to residential blocks of flats which –
  - (a) were constructed, or subject to additional building work, on or after 1 June 1992, and
  - (b) present fire hazards as a result of defective construction or other building.
- (2) For the purposes of sub-paragraph (1) “defective construction or other building” means construction or additional building work that –
  - (a) contravened building regulations or other enactments in force at the time of the construction or other building work; or
  - (b) satisfies any other criteria specified in the FHRS or in scheme supplementary regulations.

*Operation of the scheme*

- 3 (1) The FHRS must provide for persons (including freeholders and leaseholders) to apply –
  - (a) for a block to be recognised as falling within the scope of the scheme;
  - (b) for a block falling within the scope of the scheme to be recognised as eligible for grants in respect of the cost of remediation works.
- (2) The FHRS must provide –
  - (a) for the appointment of persons (“FHRS assessors”) with appropriate expertise to determine, on behalf of the Secretary of State, applications under sub-paragraph (1)(a) and (b); and
  - (b) for FHRS assessors to be required to exercise operational independence in making determinations under the scheme.
- (3) For the purposes of sub-paragraph (2) the FHRS may provide for appointments to be made by the Secretary of State or by one or more persons designated for that purpose by the Secretary of State under the scheme.

**After Schedule 11 - continued**

- (4) The FHRS must provide that determinations of FHRS assessors are final (but nothing in this sub-paragraph prevents the exercise by the High Court of its judicial review jurisdiction).

*Scheme supplementary regulations*

- 4 (1) The Secretary of State must make regulations (“scheme supplementary regulations”) in respect of the FHRS.
- (2) Scheme supplementary regulations, in particular –
- (a) may make provision for determining what is to be, or not to be, treated as a residential block of flats for the purposes of the scheme;
  - (b) may make provision for determining the date on which buildings were constructed or subject to additional building work;
  - (c) may make provision for determining who is entitled to make an application under the scheme in respect of a block of flats;
  - (d) may specify criteria to be applied by FHRS assessors in determining whether a block presents fire hazards as a result of defective construction (and the criteria may, in particular, make provision wholly or partly by reference to building regulations or other enactments in force at the time of construction or by reference to specified classes of document);
  - (e) may make provision permitting or requiring FHRS assessors to conduct tests, and requiring owners and occupiers of buildings to cooperate with FHRS assessors in conducting tests;
  - (f) may make provision permitting FHRS assessors to require local authorities or other specified classes of person to provide information or documents, and requiring persons to comply with any requirements imposed;
  - (g) may make provision about the timing of applications and determinations;
  - (h) may make provision about evidence to be adduced in support of an application;
  - (i) may require or permit FHRS assessors to operate a rebuttable presumption of defective construction where specified classes of fact have been proved (for which purpose the regulations may make provision similar to, or applying with or without modification, any enactment);
  - (j) may make provision about the making, processing and determination of applications under the scheme;
  - (k) may make provision about the giving of notice to developers and others;
  - (l) may make provision about the payment of awards;
  - (m) may make provision about monitoring expenditure on remediation works;
  - (n) may set a threshold for the estimated or quoted cost of remediation works below which an application for recognition cannot be made;

**After Schedule 11 - continued**

- (o) may make provision for determining, having regard in particular to the need for proportionality, the nature and extent of remediation costs which may be funded by the scheme (for which purpose “remediation costs” means any class of expenditure related to fire hazards, including, in particular, repair costs, the costs of interim mitigation or safety measures and reimbursement of or compensation for increases in insurance premiums);
- (p) may make provision for account to be taken of grants provided in respect of remediation works by any other scheme established by enactment or by a public authority;
- (q) may make provision for financial assistance provided by any other scheme established by enactment or by a public authority to be repaid out of grants under the remediation scheme;
- (r) may permit or require the amalgamation of multiple applications in respect of one block, or of applications on behalf of the residents of one or more blocks;
- (s) may permit or require representative applications on behalf of the residents of one or more blocks;
- (t) may make provision about the qualifications, appointment, remuneration and conduct of FHRS assessors, and the regulations may, in particular—
  - (i) provide for assessors to be remunerated from FHRS funds;
  - (ii) provide for indemnities in respect of decisions taken by assessors (for which purpose the regulations may apply an enactment (with or without modification)); and
- (u) must include provision requiring the maintenance and publication of records of applications and determinations under the scheme.

*Scheme funding regulations*

- 5 (1) The Secretary of State must make regulations about the funding of grants under the FHRS scheme (“scheme funding regulations”).
- (2) Scheme funding regulations must aim to apply the perpetrator pays principle so far as practicable.
- (3) For that purpose, scheme funding regulations must aim to ensure that a grant awarded under the scheme is funded—
  - (a) so far as possible, by the developer of the building in respect of which the grant is awarded (or, where there is more than one developer, by the developers together, with the regulations imposing joint and several liability); and
  - (b) failing that (whether by reason of the dissolution of a development company, insolvency or otherwise), by money paid into a fund maintained through a levy on the construction industry in general, or specified parts of the construction industry.
- (4) For the purposes of achieving the objective in sub-paragraph (3)(a)—
  - (a) the reference to the developer of a building includes a reference to any person who—



**After Schedule 11 - continued**

- (i) undertakes or commissions the construction of a building,
    - (ii) undertakes or commissions building work on an existing building, or
    - (iii) arranges for the construction of a building and for the sale of units in it;
  - (b) scheme funding regulations must permit an FHRS assessor to provide for an award under the scheme to be paid by one or more persons specified by the assessor (and awards may, in particular, provide for joint and several liability);
  - (c) scheme funding regulations must confer a right to appeal to the First-tier Tribunal;
  - (d) scheme funding regulations may include provision permitting an FHRS to permit or require an award for payment by a specified person to be satisfied wholly or partly by a person connected to that person (within the meaning of the regulations, for which purpose the regulations may apply, with or without modification, section 1162 of the Companies Act 2006 (parent and subsidiary undertakings) and any enactment relating to joint ventures); and
  - (e) scheme funding regulations may include provision about enforcement of liability to satisfy awards, which may, in particular—
    - (i) provide for collection of awards as a statutory debt;
    - (ii) include provision for interest or penalties;
    - (iii) provide for liability to make payments pending appeal or review; and
    - (iv) create criminal offences in connection with evasion.
- (5) For the purposes of achieving the objective in sub-paragraph (3)(b), scheme funding regulations—
- (a) must establish one or more levies to be paid by specified businesses or classes of business;
  - (b) must make provision for determining liability to pay the levy;
  - (c) may confer functions on FHRS assessors or other specified persons (which may include the Secretary of State) in respect of determination of liability to pay the levy;
  - (d) must confer on a person determined to be liable to pay the levy the right to appeal to the First-tier Tribunal;
  - (e) may provide for different amounts of levy to be paid by different classes of person;
  - (f) may provide for the levy to be paid by way of once-off payments, periodic payments or both;
  - (g) may include provision about enforcement of liability to pay the levy (which may, in particular, provide for collection of the levy as a statutory debt, include provision for interest or penalties and create criminal offences in connection with evasion);

**After Schedule 11 - continued**

- (h) must include provision about the administration of the levy by the Secretary of State, including provision as to the maintenance and publication of estimates, accounts and other records; and
  - (i) may include supplemental provision about the levy.
- (6) In making regulations under sub-paragraph (5), and in particular in assessing the proportionality and other fairness of any levy imposed by regulations under sub-paragraph (5), the Secretary of State must –
- (a) have regard to any other levy or similar imposition that appears to have a similar purpose as a levy under the scheme funding regulations, and
  - (b) must consult persons appearing to him to represent the interests of persons affected by other relevant levies and impositions.
- (7) Scheme funding regulations may include provision about –
- (a) application of awards, levies and grants, including provision for holding (or return) of surplus funds;
  - (b) the nature and extent of obligations imposed by awards (which may, in particular, provide for payments in money or services or money's worth);
  - (c) processes and procedures to be applied in determining applications for grants and questions of liability to awards (which may, in particular, include provision for determination wholly, partly, absolutely or contingently by arbitration, mediation or any other kind of process or procedure the Secretary of State thinks appropriate);
  - (d) terms and conditions of awards, levies and grants; and
  - (e) appraisals, appeals and enforcement.

*Apportionment*

- 6 (1) Scheme funding regulations may make provision about apportionment of liability for defective construction.
- (2) In particular, scheme funding regulations may provide that where a person is required to pay an award under the FHRS scheme, that person may bring proceedings to recover a contribution from one or more persons who share responsibility for the defects in respect of which the award is made.
- (3) Provision made by virtue of this paragraph may –
- (a) confer jurisdiction on the First-tier Tribunal or on any other specified court or tribunal;
  - (b) apply (with or without modifications) any enactment about third-party liability.

*Interim payments*

- 7 (1) The Secretary of State may make interim grants to persons whom the Secretary of State believes are likely to be entitled to benefit from the remediation scheme.
- (2) Interim grants may be made on such terms and conditions (including as to repayment) as the Secretary of State may specify.
- (3) Scheme supplementary regulations –

**After Schedule 11 - continued**

- (a) may include provision for account to be taken of interim grants under this sub-paragraph; and
- (b) may include other provision about interim grants under this paragraph (including provision about applications for grants, eligibility for grants and determination of applications for grants).

*Interpretation*

8 For the purposes of this Schedule—

“construction” includes any kind of building work (whether part of the original construction of a building or not) including works of improvement, repair and extension;

“class” includes description;

“FHRS funding regulations” has the meaning given by paragraph 5;

“FHRS scheme” has the meaning given by paragraph 1;

“FHRS assessor” has the meaning given by paragraph 2;

“grant” includes loans and any other form of financial assistance (for which purpose a reference to payment includes a reference to the provision of assistance);

“perpetrator pays principle” has the meaning given by paragraph 1;

“remediation costs” has the meaning given by paragraph 4; and

“scheme supplementary regulations” has the meaning given by paragraph 4.

*Consultation*

9 Before making the scheme, the scheme supplementary regulations and the scheme funding regulations, the Secretary of State must consult—

- (a) persons appearing to represent the interests of leaseholders or occupiers of blocks of flats with fire hazards;
- (b) persons appearing to represent the interests of the construction industry and related industries; and
- (c) such other persons as the Secretary of State thinks appropriate.

*Regulations*

10 (1) Scheme supplementary regulations and scheme funding regulations—

- (a) shall be made by statutory instrument;
- (b) may make provision that applies generally or only for specified purposes;
- (c) may make different provision for different purposes;
- (d) may confer functions (including discretionary functions) on specified persons or classes of person, and may provide for the Secretary of State to appoint persons to exercise functions under the regulations or the remediation scheme (whether or not on behalf of the Secretary of State); and
- (e) may include supplemental, consequential or transitional provision.

(2) Scheme funding regulations may not be made unless a draft has been laid before, and approved by resolution of, each House of Parliament.

**After Schedule 11 - continued**

- (3) Scheme supplementary regulations are subject to annulment in pursuance of a resolution of either House of Parliament.”

**Member’s explanatory statement**

*This new Schedule would implement a “polluter pays” principle (here described as “perpetrator pays”) to ensure that buildings with fire risks due to defective construction are put right without cost to leaseholders.*

**After Clause 129**

THE EARL OF LYTTON

Insert the following new Clause –

**“Flammable cladding remediation: perpetrator pays principle**

- (1) The Secretary of State must make arrangements as soon as reasonably practicable to ensure that residential blocks of flats with fire hazards are made safe –
- (a) speedily, efficiently, effectively and proportionately,
  - (b) without recourse to lengthy and expensive legal proceedings,
  - (c) without cost to leaseholders or occupiers,
  - (d) in accordance with enforcement and implementation mechanisms that prevent delay and avoidance of responsibility, and
- (e) in accordance with the perpetrator pays principle.
- (2) In sub-paragraph (1) “the perpetrator pays principle” is the principle that –
- (a) so far as reasonably practicable, remediation costs for residential blocks of flats with fire hazards should be met by the persons responsible for the hazards; and
  - (b) where that is not reasonably practicable, costs should so far as reasonably practicable be met by the construction industry.
- (3) In subsection (1) the reference to residential blocks of flats with fire hazards is a reference to residential blocks of flats which –
- (a) were constructed, or subject to additional building work, at any time on or after 1 June 1992; and
  - (b) present fire hazards as a result of construction or additional building work that contravened building regulations or other enactments in force at the time of the construction or other building work.
- (4) Arrangements for the purposes of subsection (1) –
- (a) may consist of or include making regulations under section 142(5) to bring into force one or more provisions of this Act; and
  - (b) may consist of any other arrangements that the Secretary of State considers sufficient for achieving the objectives in subsection (1).”

***Member's explanatory statement***

*This new Clause would implement a 'polluter pays' principle (here described as "perpetrator pays") to ensure that buildings with fire risks due to defective construction are put right without cost to leaseholders.*

Insert the following new Clause –

**“Fire Hazard Remediation Scheme**

Schedule (*Fire Hazard Remediation Scheme*) makes provision for the introduction of a fire hazard remediation scheme.”

***Member's explanatory statement***

*This new Clause introduces Schedule (Fire Hazard Remediation Scheme).*

# Building Safety Bill

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AMENDMENTS  
TO BE MOVED  
IN GRAND COMMITTEE

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*16 February 2022*

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