

# Building Safety Bill

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[These Government amendments were tabled on 22 March 2022.]

## AMENDMENTS TO BE MOVED ON REPORT

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### Clause 4

LORD GREENHALGH

Page 3, line 5, at end insert—

“(1A) The assistance and encouragement that must be provided under subsection (1) includes, in particular, assistance and encouragement with a view to facilitating securing the safety of disabled people in or about higher-risk buildings in relation to building safety risks as regards those buildings.”

***Member’s explanatory statement***

*This amendment provides that the regulator must in particular provide assistance and encouragement to relevant persons with a view to facilitating their securing the safety of disabled people in or about higher-risk buildings.*

Page 3, line 9, leave out “or building safety managers”

***Member’s explanatory statement***

*This amendment is consequential on the amendments in the name of the Minister leaving out Clauses 82 to 86 (which remove provision about building safety managers).*

Page 3, line 13, leave out “subsection (1)” and insert “subsections (1) and (1A)”

***Member’s explanatory statement***

*This amendment is consequential on the first amendment to this Clause in the name of the Minister.*

Page 3, line 14, at end insert—

““disabled”: see section 29;”

***Member’s explanatory statement***

*This amendment is consequential on the first amendment to this Clause in the name of the Minister.*

### Clause 11

LORD GREENHALGH

Page 5, line 18, at end insert –

- “(2A) The regulator must take all reasonable steps to ensure that the committee includes –
- (a) one or more residents of a higher-risk building who are disabled,
  - (b) a body that represents, supports or promotes the interests of any description of disabled people that includes residents of higher-risk buildings, or
  - (c) a member of a body within paragraph (b).”

***Member’s explanatory statement***

*This amendment provides that the regulator must take all reasonable steps to ensure that a residents’ panel includes one or more disabled residents or a body that represents, supports or promotes the interests of disabled residents of higher-risk buildings.*

### Clause 12

LORD GREENHALGH

Page 6, line 15, at end insert –

- “(1A) But regulations repealing section 9, 10 or 11 may be made only if the regulator has made a proposal to the Secretary of State for the making of such regulations (as to which see section 7(2)).”

***Member’s explanatory statement***

*This amendment provides that the power to repeal a Clause about committees may be exercised only pursuant to a proposal by the regulator.*

Page 6, line 16, leave out “The regulations” and insert “Regulations under this section”

***Member’s explanatory statement***

*This amendment is consequential on the other amendment of this Clause in the name of the Minister.*

### Clause 20

LORD GREENHALGH

Page 10, line 36, at end insert –

- “(1A) A statement under subsection (1) must, in particular, include information about the regulator’s engagement with residents of higher-risk buildings who are disabled.”

***Member’s explanatory statement***

*This amendment provides that a statement of the regulator’s engagement with residents etc must include information about the regulator’s engagement with disabled residents.*

**Clause 29**

LORD GREENHALGH

Page 17, line 6, at end insert –

““disabled”: a person is disabled if the person has a physical or mental impairment which has a substantial and long-term adverse effect on the person’s ability to carry out normal day-to-day activities;”

***Member’s explanatory statement***

*This amendment defines “disabled” for the purposes of Part 2.*

**Clause 41**

LORD GREENHALGH

Page 56, line 27, at end insert –

*“Inspection of local authorities and registered building control approvers*

**58Z7A Inspections**

- (1) The regulatory authority may carry out an inspection of a local authority, or a registered building control approver, in relation to their exercise of building control functions.
- (2) The purposes for which an inspection may be carried out include –
  - (a) ascertaining the efficiency and effectiveness of the local authority or registered building control approver in exercising their building control functions;
  - (b) verifying any information provided by the local authority or registered building control approver to the regulatory authority, in connection with their building control functions.”

***Member’s explanatory statement***

*This amendment confers a power on the regulatory authority to inspect local authorities and registered building control approvers, in relation to their building control functions.*

**Clause 47**

LORD GREENHALGH

Leave out Clause 47

***Member’s explanatory statement***

*This amendment removes provision about insurance cover relating to work to which an initial notice relates.*

**After Clause 47**

LORD GREENHALGH

Insert the following new Clause –

**“Insurance: removal of requirements**

- (1) The Building Act 1984 is amended as follows.

**After Clause 47 - continued**

- (2) In section 47 (giving and acceptance of initial notice)—
  - (a) in subsection (1) omit paragraph (c) (but not the “and” at the end of it);
  - (b) omit subsections (6) and (7).
- (3) In section 51A(2) (variation of work to which initial notice relates) omit paragraph (c) (but not the “and” at the end of it).
- (4) In section 56 (recording and furnishing of information) omit subsection (2).”

***Member’s explanatory statement***

*This new Clause removes requirements in Part 2 of the Building Act 1984 relating to insurance.*

**Clause 57**

LORD GREENHALGH

Page 80, line 8, at end insert—

- “(3A) The different provision that may be made by the regulations by virtue of section 120A(2)(b) includes in particular different provision in relation to—
- (a) persons who are eligible to be members of a building industry scheme and are not members of that scheme, and
  - (b) other persons.”

***Member’s explanatory statement***

*This amendment clarifies that regulations under this Clause may make different provision in relation to persons who are eligible, but not members, of a scheme established under Clause 128 and other persons.*

Page 80, line 43, at end insert—

““building industry scheme” means a scheme established under section 128 of the Building Safety Act 2022;”

***Member’s explanatory statement***

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

**Clause 60**

LORD GREENHALGH

Page 83, line 31, leave out paragraph (e)

***Member’s explanatory statement***

*This amendment is consequential on the amendments in the name of the Minister leaving out Clauses 82 to 86 (which remove provision about building safety managers).*

Page 84, line 14, leave out “and Schedule 8”

***Member's explanatory statement***

*This amendment is consequential on the amendment to leave out Schedule 8.*

**Clause 79**

LORD GREENHALGH

Page 94, line 34, leave out paragraph (a)

***Member's explanatory statement***

*This amendment is consequential on the amendments in the name of the Minister leaving out Clauses 82 and 85.*

**Clause 80**

LORD GREENHALGH

Page 96, line 4, leave out paragraph (a)

***Member's explanatory statement***

*This amendment is consequential on the amendments in the name of the Minister leaving out Clauses 82 and 85.*

**Clause 81**

LORD GREENHALGH

Page 96, line 23, leave out “, and any building safety manager,”

***Member's explanatory statement***

*This amendment is consequential on the amendments in the name of the Minister leaving out Clauses 82 to 86 (which remove provision about building safety managers).*

**Clause 82**

LORD GREENHALGH

Leave out Clause 82

***Member's explanatory statement***

*This amendment and the amendments leaving out Clauses 83 to 86 in the name of the Minister remove provision about building safety managers.*

**Clause 83**

LORD GREENHALGH

Leave out Clause 83

***Member's explanatory statement***

*This amendment and the amendments leaving out Clauses 82 and 84 to 86 in the name of the Minister remove provision about building safety managers.*

**Clause 84**

LORD GREENHALGH

Leave out Clause 84

***Member's explanatory statement***

*This amendment and the amendments leaving out Clauses 82 and 83 and 85 and 86 in the name of the Minister remove provision about building safety managers.*

**Clause 85**

LORD GREENHALGH

Leave out Clause 85

***Member's explanatory statement***

*This amendment and the amendments leaving out Clauses 82 to 84 and 86 in the name of the Minister remove provision about building safety managers.*

**Clause 86**

LORD GREENHALGH

Leave out Clause 86

***Member's explanatory statement***

*This amendment and the amendments leaving out Clauses 82 to 85 in the name of the Minister remove provision about building safety managers.*

**Clause 95**

LORD GREENHALGH

Page 105, line 16, leave out “intervals” and insert “times”

***Member's explanatory statement***

*This amendment requires the strategy to be reviewed at times prescribed by regulations.*

Page 105, line 17, at end insert—

- “(c) in prescribed circumstances, consult relevant persons and prescribed persons on the strategy and take any representations made on the consultation into account when next reviewing the strategy;
- (d) act in accordance with the strategy.”

***Member's explanatory statement***

*This amendment requires the principal accountable person to consult on the residents' engagement strategy, and to act in accordance with the strategy.*

Page 105, line 26, leave out “an accountable person will consult relevant persons” and insert “relevant persons will be consulted”

**Member's explanatory statement**

*This amendment is a drafting change.*

Page 105, line 30, leave out “an accountable person’s”

**Member's explanatory statement**

*This amendment is a drafting change.*

Page 105, line 39, at end insert –

“(c) any prescribed person.”

**Member's explanatory statement**

*This amendment requires an accountable person to give a copy of the strategy to a person prescribed by regulations.*

Page 106, line 7, at end insert –

“(aa) make provision about the preparation, review or revision of a residents’ engagement strategy, in cases where there is more than one accountable person for the building;”

**Member's explanatory statement**

*This amendment enables regulations to make provision about the making, review or revision of a strategy, in cases where there is more than one accountable person.*

Page 106, line 9, at end insert –

“(c) make provision about consultations under this section.”

**Member's explanatory statement**

*This amendment enables regulations to make provision about consultations on a strategy.*

**Schedule 7****LORD GREENHALGH**

Page 200, line 7, leave out paragraph (b)

**Member's explanatory statement**

*This amendment is consequential on the amendments in the name of the Minister leaving out Clauses 82 to 86 (which remove provision about building safety managers).*

Page 202, leave out lines 8 and 9

**Member's explanatory statement**

*This amendment is consequential on the removal of the building safety charge as a separate charge.*

Page 202, line 12, leave out from “building” to end of line 14

**Member's explanatory statement**

*This amendment is consequential on the removal of the building safety charge as a separate charge.*

Page 202, line 21, leave out from “Part” to end of line 22

**Member's explanatory statement**

*This amendment is consequential on the amendment in the name of the Minister leaving out Clause 82.*

Page 202, line 25, leave out paragraph (a)

**Member's explanatory statement**

*This amendment is consequential on the removal of the building safety charge as a separate charge.*

Page 203, line 17, leave out sub-paragraph (4)

**Member's explanatory statement**

*This amendment is consequential on the amendment in the name of the Minister leaving out Clause 82.*

Page 204, line 6, leave out “the” and insert “relevant”

**Member's explanatory statement**

*This amendment provides that only “relevant” rights and liabilities of an accountable person for the building become the rights and liabilities of the special measures manager under paragraph 7 of the Schedule.*

Page 204, line 6, leave out “a relevant person” and insert “an accountable person for the building”

**Member's explanatory statement**

*This amendment is consequential on the Minister's amendment at page 204, line 35.*

Page 204, line 7, leave out second “the”

**Member's explanatory statement**

*This amendment is consequential on the Minister's first amendment at page 204, line 6.*

Page 204, line 11, leave out “a relevant person” and insert “an accountable person for the building”

**Member's explanatory statement**

*This amendment is consequential on the Minister's amendment at page 204, line 35.*

Page 204, line 12, leave out paragraph (c) and insert—

“(c) one or more rights or liabilities of that person under the contract are relevant rights or liabilities,”



**Member's explanatory statement**

*This amendment is consequential on the Minister's first amendment at page 204, line 6.*

Page 204, line 17, at end insert –

“(3A) A right or liability of an accountable person for the building under a relevant contract is a “relevant right or liability” if it relates to a function of that person under, or under regulations made under, this Part in relation to the building.”

**Member's explanatory statement**

*This amendment defines relevant right or liability for the purposes of paragraph 7 of the Schedule.*

Page 204, line 17, at end insert –

“(3B) The notice under sub-paragraph (3)(e) must state which rights or liabilities under the contract are relevant rights or liabilities.”

**Member's explanatory statement**

*This amendment is consequential on the Minister's first amendment at page 204, line 6.*

Page 204, line 21, leave out “a relevant person” and insert “an accountable person for the building”

**Member's explanatory statement**

*This amendment is consequential on the Minister's amendment at page 204, line 35.*

Page 204, line 23, leave out “relevant function of a relevant person” and insert “function of that person under, or under regulations made under, this Part in relation to the building”

**Member's explanatory statement**

*This amendment is consequential on the Minister's amendment at page 204, line 35.*

Page 204, line 32, leave out “a relevant person” and insert “an accountable person for the building”

**Member's explanatory statement**

*This amendment is consequential on the Minister's amendment at page 204, line 35.*

Page 204, line 35, leave out sub-paragraph (7)

**Member's explanatory statement**

*This amendment is consequential on the amendments in the name of the Minister leaving out Clauses 82 to 86 (which remove provision about building safety managers).*

Page 208, line 3, leave out “building safety charges or”

***Member's explanatory statement***

*This amendment is consequential on the removal of the building safety charge as a separate charge.*

Page 210, line 37, leave out “building safety charges or”

***Member's explanatory statement***

*This amendment is consequential on the removal of the building safety charge as a separate charge.*

Page 211, line 3, after “making” insert “, variation or discharge”

***Member's explanatory statement***

*This amendment is consequential on the Minister's amendment at page 211, line 11.*

Page 211, line 5, leave out sub-paragraph (2)

***Member's explanatory statement***

*This amendment is consequential on the Minister's amendment at page 211, line 11.*

Page 211, line 11, leave out paragraph (b)

***Member's explanatory statement***

*This amendment is consequential on the amendments in the name of the Minister leaving out Clauses 82 to 86 (which remove provision about building safety managers).*

Page 212, leave out line 18

***Member's explanatory statement***

*This amendment is consequential on the removal of the building safety charge as a separate charge.*

**Clause 112**

LORD GREENHALGH

Page 115, line 19, leave out paragraph (a)

***Member's explanatory statement***

*This amendment is consequential on the amendments in the name of the Minister leaving out Clauses 82 and 85.*

**Clause 114**

LORD GREENHALGH

Page 116, line 30, leave out “section 110” insert “paragraph 8(3) of Schedule 7”

***Member's explanatory statement***

*This amendment is a drafting change.*

**After Clause 114**

LORD GREENHALGH

Insert the following new Clause –

**“Building safety directors of resident management companies**

- (1) This section applies in relation to a resident management company that is an accountable person for a higher-risk building.
- (2) The articles of association of the resident management company have effect as if they included such provision as may be prescribed relating to –
  - (a) eligibility for appointment as a director of the company, for a building safety purpose;
  - (b) the appointment of a director for such a purpose;
  - (c) the entitlement to remuneration of a director appointed for such a purpose;
  - (d) the removal of a director so appointed.
- (3) Subsection (2) has effect –
  - (a) whether or not the provision is adopted by the company;
  - (b) whether the company was formed before or after the coming into force of this section;
  - (c) notwithstanding anything in the company’s articles of association.
- (4) In this section –

“building safety purpose” means the purpose of supporting the resident management company in complying with its duties under this Part or under regulations made under this Part;

“resident management company” has the meaning given by regulations made by the Secretary of State.”

***Member’s explanatory statement***

*This new Clause makes provision about directors of a resident management company that is an accountable person.*

**Clause 115**

LORD GREENHALGH

Page 117, line 4, leave out “(6)” and insert “(5)”

***Member’s explanatory statement***

*This amendment is consequential on other amendments to this Clause in the name of the Minister.*

Page 117, line 8, leave out “in England”

***Member’s explanatory statement***

*This amendment is a drafting change.*

Page 118, leave out lines 36 to 38

**Member's explanatory statement**

*This amendment is consequential on the amendments in the name of the Minister leaving out Clauses 82 to 86 (which remove provision about building safety managers).*

Page 119, leave out line 1

**Member's explanatory statement**

*This amendment is consequential on the amendments in the name of the Minister leaving out Clauses 82 to 86 (which remove provision about building safety managers).*

Page 119, line 7, leave out “Implied terms relating to building safety charges” and insert “Liability for building safety costs”

**Member's explanatory statement**

*This amendment is consequential on a subsequent amendment to this clause in the Minister's name which removes the building safety charge as a separate charge.*

Page 119, line 8, leave out “in England”

**Member's explanatory statement**

*This amendment is a drafting change.*

Page 119, leave out lines 10 to 17

**Member's explanatory statement**

*This amendment removes the building safety charge as a separate charge.*

Page 119, line 26, at end insert –

- “(5A) The relevant lease has effect –
  - (a) as if the matters for which the service charge is payable under the lease included the taking of building safety measures by or on behalf of a relevant person (insofar as this would not otherwise be the case), and
  - (b) where the lease contains different methods for apportioning different relevant costs (within the meaning of section 18), as if it provided for any costs for which the tenant is liable by virtue only of paragraph (a) to be apportioned in the same way as costs incurred in connection with insuring the building.
- (5B) “Building safety measure” means any of the following –
  - (a) applying for registration of a higher-risk building in accordance with section 77 of the Building Safety Act 2022;
  - (b) applying for a building assessment certificate in accordance with section 78 of that Act;
  - (c) displaying a building assessment certificate in accordance with section 81 of that Act;
  - (d) assessing building safety risks in accordance with section 87 of that Act;

**Clause 115 - continued**

- (e) taking reasonable steps in accordance with section 88 of that Act (management of building safety risks), other than steps involving the carrying out of works as referred to in section 88(2);
  - (f) preparing and revising a safety case report in accordance with section 89 of that Act;
  - (g) notifying the regulator of a safety case report, and giving a copy of a safety case report to the regulator, in accordance with section 90 of that Act;
  - (h) establishing and operating a mandatory occurrence reporting system, and giving information to the regulator, in accordance with section 91 of that Act;
  - (i) keeping information and documents in accordance with section 92 of that Act;
  - (j) giving information and documents to any person in accordance with section 93, 94 or 96 of that Act;
  - (k) complying with any duty under section 95 of that Act (residents' engagement strategy);
  - (l) establishing and operating a system for the investigation of complaints in accordance with section 97 of that Act;
  - (m) giving a contravention notice to a resident, and making an application to the county court, in accordance with section 100 of that Act;
  - (n) making a request to enter premises, or making an application to the county court, in accordance with section 101 of that Act (access to premises).
- (5C) For the purposes of this section any of the following incurred in connection with the taking of a building safety measure are to be regarded as incurred in taking the measure –
- (a) legal and other professional fees;
  - (b) fees payable to the regulator;
  - (c) management costs.”

***Member's explanatory statement***

*This amendment provides that the service charge provisions under the lease have effect as if they covered costs incurred or to be incurred in connection with the taking of building safety measures.*

Page 119, leave out line 28

***Member's explanatory statement***

*This amendment is consequential on the removal of the building safety charge as a separate charge.*

Page 119, line 31, at end insert –

““relevant person” means –

- (a) if the landlord is an accountable person for the building, the landlord or a special measures manager for the building;

**Clause 115 - continued**

- (b) otherwise, any superior landlord who is an accountable person for the building or a special measures manager for the building;”

***Member’s explanatory statement***

*This amendment, which creates a definition of “relevant person”, is consequential on other amendments to this Clause in the name of the Minister.*

Page 119, line 36, at end insert –

- “(7) The Secretary of State may by regulations made by statutory instrument amend subsection (5B) so as to add, remove or modify a building safety measure.
- (8) The regulations may make incidental, transitional or saving provision.
- (9) A statutory instrument containing regulations under subsection (7) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

***Member’s explanatory statement***

*This amendment confers a power to amend the definition of “building safety measure”.*

Page 119, line 36, at end insert –

**“30DA Liability for remuneration of building safety director of resident management company etc**

- (1) This section applies to a lease of premises which consist of or include a dwelling in a higher-risk building if –
- (a) the landlord is an accountable person for the building,
  - (b) the landlord is –
    - (i) a resident management company within the meaning of section (Building safety directors of resident management companies) of the Building Safety Act 2022, or
    - (ii) an RTM company within the meaning of Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (right to manage), and
  - (c) the tenant is liable to pay a service charge.
- (2) The lease has effect –
- (a) as if the matters for which the service charge is payable under the lease included remunerating any director of the landlord appointed for a building safety purpose (insofar as this would not otherwise be the case), and
  - (b) where the lease contains different methods for apportioning different relevant costs (within the meaning of section 18), as if it provided that any costs for which the tenant is liable by virtue only of paragraph (a) to be apportioned in the same way as costs incurred in connection with insuring the building.
- (3) In this section –
- “building safety purpose” means the purpose of supporting the landlord in complying with its duties under Part 4 of the Building Safety Act 2022 or under regulations made under that Part;

**Clause 115 - continued**

“landlord” includes any person who has a right under the lease to enforce payment of a service charge;  
“service charge” has the meaning given by section 18;  
“tenant” includes any person who has an obligation under the lease to pay a service charge.”

***Member’s explanatory statement***

*This amendment makes provision for the recovery from tenants of costs incurred by a residents’ company in remunerating a director of the company, appointed in connection with its building safety duties.*

Page 119, line 37, leave out “section 30C or 30D” and insert “sections 30C to 30DA”

***Member’s explanatory statement***

*This amendment is consequential on the second amendment in the name of the Minister at page 119, line 36.*

Page 119, line 39, leave out “or 30D”

***Member’s explanatory statement***

*This amendment is consequential on other amendments to this Clause in the name of the Minister.*

Page 120, line 2, leave out “or 30D”

***Member’s explanatory statement***

*This amendment is consequential on other amendments to this Clause in the name of the Minister.*

Page 120, line 5, at end insert –

“(2) A covenant or agreement, whether contained in a lease to which section 30D or 30DA applies or in an agreement collateral to such a lease, is void insofar as it purports to modify the effect of section 30D(5A) or 30DA(2).”

***Member’s explanatory statement***

*This amendment is consequential on other amendments to this Clause in the name of the Minister.*

Page 120, line 8, leave out “section 30C or 30D (implied terms)” and insert “any of sections 30C to 30DA (implied terms etc)”

***Member’s explanatory statement***

*This amendment is consequential on other amendments to this Clause in the name of the Minister.*

Page 120, line 14, leave out “or 30D(2)”

**Member's explanatory statement**

*This amendment is consequential on other amendments to this Clause in the name of the Minister.*

Page 120, line 20, leave out “or 30D(2)”

**Member's explanatory statement**

*This amendment is consequential on other amendments to this Clause in the name of the Minister.*

Page 120, line 23, leave out “and Schedule 2”

**Member's explanatory statement**

*This amendment is consequential on other amendments to this Clause in the name of the Minister.*

Page 120, leave out lines 26 and 27

**Member's explanatory statement**

*This amendment is consequential on the amendments in the name of the Minister leaving out Clauses 82 to 86 (which remove provision about building safety managers).*

Page 120, line 35, leave out subsections (3) and (4) and insert –

“(3) After section 20E (inserted by section 134) insert –

**“20F Limitation of service charges: excluded costs for higher-risk buildings**

- (1) This section applies in relation to a lease to which section 30D (higher-risk buildings: building safety costs) applies.
- (2) Excluded costs are not to be regarded as relevant costs to be taken into account in determining the amount of service charge payable by a tenant under the lease.
- (3) In this section “excluded costs” means any of the following incurred in connection with Part 4 of the Building Safety Act 2022 or regulations made under that Part –
  - (a) costs incurred or to be incurred by or on behalf of a relevant person solely as a result of any penalty imposed or enforcement action taken by the regulator;
  - (b) legal costs incurred or to be incurred by or on behalf of a relevant person in connection with special measures order proceedings;
  - (c) costs incurred or to be incurred by or on behalf of a relevant person by reason of any negligence, breach of contract or unlawful act on the part of that relevant person or a person acting on their behalf;
  - (d) costs of a description prescribed by regulations made by the Secretary of State that are incurred or to be incurred by or on behalf of an accountable person or special measures manager for the building in connection with the taking of building safety measures.

(4) In this section –



**Clause 115 - continued**

“building safety measures” has the meaning given by section 30D;

“enforcement action” means action taken with a view to, or in connection with—

- (a) securing compliance with Part 4 of the Building Safety Act 2022 or regulations made under that Part, or
- (b) the imposition of a sanction in respect of a contravention of that Part or those regulations;

“the regulator” has the meaning given by section 118 of the Building Safety Act 2022;

“relevant person” means—

- (a) where the landlord under the lease is an accountable person for the higher-risk building, the landlord or a special measures manager for the higher-risk building;
- (b) where the landlord is not such an accountable person, any superior landlord who is an accountable person for the higher-risk building or a special measures manager for the higher-risk building;

“special measures order proceedings” means any proceedings relating to the making, variation or discharge of, or the giving of directions in relation to, a special measures order under Schedule 7 to the Building Safety Act 2022 (including any appeals in relation to such proceedings).

- (5) Regulations under this section are to be made by statutory instrument.
- (6) A power to make regulations includes power to make—
  - (a) incidental, transitional or saving provision;
  - (b) different provision for different purposes.
- (7) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.”

- (4) In section 21 (service charge information) after subsection (6) insert—

“(6A) In particular, regulations which make provision about higher-risk buildings (within the meaning of Part 4 of the Building Safety Act 2022) need not contain provision of a kind mentioned in subsection (2) or (3).”

- (4A) In section 30 (meaning of “landlord” and “tenant”)—

- (a) after the definition of “landlord” insert—
  - ““services” includes, in relation to a dwelling in a higher-risk building (as defined by section 30H), building safety measures within the meaning of section 30D;”;
- (b) in the heading for ““flat”, “landlord” and “tenant”” substitute ““landlord”, “tenant” etc”.”

***Member’s explanatory statement***

*This amendment applies the existing provisions on service charges to costs incurred in respect of building safety measures, provides that certain costs may not be taken into account in calculating service charges, makes provision about service charge information, and makes provision consequential on other amendments to this Clause in the name of the Minister.*

Page 121, line 8, leave out “implied terms relating to building safety charges).”” and insert “building safety costs),  
 section 30DA (liability for remuneration of building safety director of resident management company etc).””

***Member’s explanatory statement***

*This amendment is consequential on other amendments to this Clause in the name of the Minister.*

Page 121, line 9, leave out subsections (6) to (8)

***Member’s explanatory statement***

*This amendment is consequential on other amendments to this Clause in the name of the Minister.*

Page 121, line 24, leave out from “of” to end of line 26 and insert “the Commonhold and Leasehold Reform Act 2002 (application to Crown)–  
 (a) for “30B” substitute “30H”;

***Member’s explanatory statement***

*This amendment is consequential on other amendments to this Clause in the name of the Minister.*

**Schedule 8**

LORD GREENHALGH

Leave out Schedule 8

***Member’s explanatory statement***

*This amendment is consequential on the removal of the building safety charge as a separate charge.*

**Clause 116**

LORD GREENHALGH

Page 122, line 4, leave out “, an administration charge or a building safety charge” and insert “or an administration charge”

***Member’s explanatory statement***

*This amendment is consequential on amendments to Clause 115 removing the building safety charge as a separate charge.*

Page 122, line 11, leave out from “service charges” to “from” in line 12 and insert “or administration charges”

***Member’s explanatory statement***

*This amendment is consequential on amendments to Clause 115 removing the building safety charge as a separate charge.*

Page 122, line 12, at end insert “, or

- (b) a special measures order (within the meaning of Schedule 7 to the Building Safety Act 2022) is in force.”

***Member’s explanatory statement***

*This amendment provides that subsection (2) of inserted section 47A does not apply if a special measures order is in force.*

Page 122, leave out lines 19 and 20

***Member’s explanatory statement***

*This amendment is consequential on amendments to Clause 115 removing the building safety charge as a separate charge.*

Page 122, line 30, leave out “, administration charge or building safety charge” and insert “or administration charge”

***Member’s explanatory statement***

*This amendment is consequential on amendments to Clause 115 removing the building safety charge as a separate charge.*

Page 122, line 35, leave out “, administration charge or building safety charge” and insert “or administration charge”

***Member’s explanatory statement***

*This amendment is consequential on amendments to Clause 115 removing the building safety charge as a separate charge.*

Page 122, line 39, leave out from “service charges” to “from” in line 40 and insert “or administration charges”

***Member’s explanatory statement***

*This amendment is consequential on amendments to Clause 115 removing the building safety charge as a separate charge.*

Page 122, line 40, at end insert “, or

- (b) a special measures order (within the meaning of Schedule 7 to the Building Safety Act 2022) is in force.”

***Member’s explanatory statement***

*This amendment provides that subsection (2) of inserted section 49A does not apply if a special measures order is in force.*

Page 123, leave out lines 16 to 19

***Member’s explanatory statement***

*This amendment is consequential on the amendments in the name of the Minister leaving out Clauses 82 to 86 (which remove provision about building safety managers).*

Page 123, leave out lines 22 and 23

***Member’s explanatory statement***

*This amendment is consequential on amendments to Clause 115 removing the building safety charge as a separate charge.*

Page 123, leave out lines 24 and 25

***Member’s explanatory statement***

*This amendment is consequential on the amendments in the name of the Minister leaving out Clauses 82 to 86 (which remove provision about building safety managers).*

Page 123, leave out line 28

***Member’s explanatory statement***

*This amendment is consequential on amendments to Clause 115 removing the building safety charge as a separate charge.*

Page 123, leave out lines 29 and 30

***Member’s explanatory statement***

*This amendment is consequential on the amendments in the name of the Minister leaving out Clauses 82 to 86 (which remove provision about building safety managers).*

**Clause 118**

LORD GREENHALGH

Page 125, leave out line 32

***Member’s explanatory statement***

*This amendment is consequential on the amendment in the name of the Minister leaving out Clause 82.*

**Clause 120**

LORD GREENHALGH

Page 127, line 30, leave out paragraph (c)

***Member’s explanatory statement***

*This amendment removes the power to provide that a prescribed description of building is a “relevant building”.*

Page 127, line 34, at end insert –

“(za) in relation to which a right under Part 1 of the Landlord and Tenant Act 1987 (tenants’ rights of first refusal) or Part 3 of that Act (compulsory acquisition by tenants of landlord’s interest) has been exercised,”

***Member’s explanatory statement***

*This amendment provides that “relevant building” does not include a building in respect of which certain tenants’ rights have been exercised.*

Page 127, line 37, at end insert –

“(aa) if the freehold estate in the building or part of the building is leaseholder owned (within the meaning of regulations made by the Secretary of State).”

***Member’s explanatory statement***

*This amendment provides that “relevant building” does not include a building if it is leaseholder owned (which expression is to be defined by regulations).*

Page 128, line 16, leave out subsection (7)

***Member’s explanatory statement***

*This amendment removes the power to make supplementary provision, in consequence of the proposed new Clause after Clause 120 in the name of the Minister.*

**After Clause 120**

LORD GREENHALGH

Insert the following new Clause –

**“Section 120: height of buildings and number of storeys**

- (1) This section applies for the purpose of section 120.
- (2) The height of a building is to be measured from ground level to the finished surface of the floor of the top storey of the building (ignoring any storey which is a roof-top machinery or plant area or consists exclusively of machinery or plant rooms).
- (3) When determining the number of storeys in a building –
  - (a) any storey below ground level is to be disregarded;
  - (b) any mezzanine floor is to be regarded as a storey if its internal floor area is at least half of the internal floor area of the largest storey in the building which is not below ground level.
- (4) In subsection (2) “ground level”, in relation to a building, means –
  - (a) the level of the surface of the ground immediately adjacent to the building, or
  - (b) where the level of the surface of the ground on which the building is situated is not uniform, the level of the lowest part of the surface of the ground immediately adjacent to it.
- (5) For the purposes of subsection (3) a storey is “below ground level” if any part of the finished surface of the ceiling of the storey is below the level of the surface of the ground immediately adjacent to that part of the building.”

***Member’s explanatory statement***

*This new Clause sets out how the height of a building, and the number of storeys, is to be calculated.*

### Clause 121

LORD GREENHALGH

Page 128, line 31, leave out “only one dwelling” and insert “no more than two dwellings”

***Member’s explanatory statement***

*This amendment provides that a lease may be a qualifying lease if a relevant tenant owns no more than two dwellings (excluding their interest under the lease).*

Page 129, line 1, after “dwelling” insert “in England, Wales or Northern Ireland”

***Member’s explanatory statement***

*This amendment ensures that subsection (4)(b) does not apply to Scotland (as the word “ownership” suffices for property in Scotland).*

### Clause 122

LORD GREENHALGH

Page 129, line 10, leave out “means a defect as regards a building” and insert “, in relation to a building, means a defect as regards the building”

***Member’s explanatory statement***

*This amendment is a drafting change.*

Page 129, line 11, leave out “including” and insert “or”

***Member’s explanatory statement***

*This amendment is a drafting change.*

Page 129, line 14, leave out from “means” to end of line 19 and insert “any of the following—

- (a) works relating to the construction or conversion of the building, if the construction or conversion was completed in the relevant period;
- (b) works undertaken or commissioned by or on behalf of a relevant landlord or management company, if the works were completed in the relevant period;
- (c) works undertaken after the end of the relevant period to remedy a relevant defect (including a defect that is a relevant defect by virtue of this paragraph).

“The relevant period” here means the period of 30 years ending with the time this section comes into force.

- (3A) In subsection (2) the reference to anything done (or not done) in connection with relevant works includes anything done (or not done) in the provision of professional services in connection with such works.”

**Member's explanatory statement**

*This amendment makes drafting changes, provides that "relevant works" includes works undertaken to remedy a relevant defect (which means that a defect resulting from those works is capable of being a "relevant defect"), and ensures that professional services are covered (so a defect resulting from such services is capable of being a "relevant defect").*

Page 129, leave out lines 25 and 26 and insert—

““conversion” means the conversion of the building for use (wholly or partly) for residential purposes;”

**Member's explanatory statement**

*This amendment defines "conversion" for the purposes of this Clause.*

Page 129, line 27, after first "landlord" insert "or management company"

**Member's explanatory statement**

*This amendment and the next amendment in the name of the Minister change the defined term to "relevant landlord or management company", bringing in persons who are responsible under a lease for carrying out works.*

Page 129, line 28, at end insert "or any person who is party to such a lease otherwise than as landlord or tenant"

**Member's explanatory statement**

*See the explanatory statement relating to the previous amendment in the name of the Minister.*

**Clause 123**

## LORD GREENHALGH

Page 129, line 30, leave out from "a" to end of line 32 and insert "partnership or body corporate is associated with another person in the circumstances mentioned in subsections (2) to (3)."

**Member's explanatory statement**

*This amendment is a drafting change.*

Page 129, line 33, leave out subsection (2) and insert—

“(2) A partnership is associated with any person who was a partner in the partnership, other than a limited partner, at any time in the period of 5 years ending at the qualifying time (“the relevant period”).

(2A) A body corporate is associated with any person who was a director of the body corporate at any time in the relevant period.”

**Member's explanatory statement**

*This amendment defines who a partnership is associated with, and that a body corporate is associated with a person who was a director in the relevant period.*

Page 129, line 36, leave out from beginning to second "if" and insert "A body corporate is associated with another body corporate"

**Member's explanatory statement**

*This amendment is a drafting change.*

Page 129, line 37, leave out from first “the” to “or” in line 38 and insert “relevant period a person was a director of both of them”

**Member's explanatory statement**

*This amendment is a drafting change.*

Page 130, line 33, at end insert –

“(9) In this section “partnership” means –

- (a) a partnership within the meaning of the Partnership Act 1890, or
- (b) a limited partnership registered under the Limited Partnerships Act 1907,

or a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom (and the reference to “limited partner” is to be read accordingly).”

**Member's explanatory statement**

*This amendment defines “partnership” for the purposes of this Clause.*

Page 130, line 33, at end insert –

“(10) The Secretary of State may by regulations provide that, in relation to a prescribed reference in a provision mentioned in subsection (1) to anyone associated with another person, subsections (2) to (3) have effect with prescribed modifications.”

**Member's explanatory statement**

*This amendment provides that subsections (2) to (3) may be modified in their application to a reference, in a provision mentioned in subsection (1), to an associate.*

## Schedule 9

### LORD GREENHALGH

Page 225, line 10, at end insert –

““joint venture” includes a partnership (as defined by section 123);”

**Member's explanatory statement**

*This amendment defines “joint venture” for the purposes of the Schedule.*

Page 225, line 10, at end insert –

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

**Member's explanatory statement**

*This amendment defines “prescribed” for the purposes of the Schedule.*



Page 225, line 25, at end insert –

“(2) The definition of “service charge” applies in relation to a lease of premises that do not include a dwelling as it applies in relation to a lease of a dwelling.”

***Member’s explanatory statement***

*This amendment ensures that the definition of “service charge” works for leases of premises that do not include a dwelling (as to which, see the next amendment in the name of the Minister).*

Page 225, line 26, at end insert –

“(A1) This paragraph applies in relation to a lease of any premises in a relevant building.”

***Member’s explanatory statement***

*This amendment extends the leases to which this paragraph applies.*

Page 225, line 27, leave out “a qualifying lease” and insert “the lease”

***Member’s explanatory statement***

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

Page 225, line 30, leave out “or has at any time been”

***Member’s explanatory statement***

*This amendment is a drafting change.*

Page 225, line 34, after “was” insert “, or was in a joint venture with,”

***Member’s explanatory statement***

*This amendment extends the persons responsible for a defect to persons who were in a joint venture with the developer.*

Page 225, line 35, leave out “carried out” and insert “undertook or commissioned”

***Member’s explanatory statement***

*This amendment provides that the persons responsible for a defect include a person who undertook or commissioned the works in question.*

Page 225, line 36, leave out “carried out” and insert “undertook or commissioned”

***Member’s explanatory statement***

*This amendment provides that the persons responsible for a defect include a person who undertook or commissioned the works in question.*

Page 226, line 1, leave out from “who” to second “building” in line 2 and insert “undertook or commissioned the construction or conversion of the building (or part of the”

**Member's explanatory statement**

*This amendment is consequential on the amendment in the name of the Minister at page 225, line 26.*

Page 226, line 5, leave out from “a” to end of line 7 and insert “defect which is a relevant defect by virtue of section 122(3)(a);”

**Member's explanatory statement**

*This amendment is consequential on amendments to Clause 122 in the name of the Minister.*

Page 226, line 8, leave out “, in relation to a qualifying lease;”

**Member's explanatory statement**

*This amendment is consequential on the amendment in the name of the Minister at page 225, line 26.*

Page 226, line 11, leave out paragraph 3

**Member's explanatory statement**

*This amendment is consequential on the amendment in the name of the Minister at page 225, line 26.*

Page 226, line 20, at end insert –

*“No service charge payable if landlord meets contribution condition*

- 3A(1) No service charge is payable under a qualifying lease in respect of a relevant measure relating to any relevant defect if the landlord under the lease at the qualifying time (“the relevant landlord”) met the contribution condition.
- (2) The contribution condition is that the landlord group’s net worth at the qualifying time was more than  $N \times \pounds 2,000,000$ , where  $N$  is the number of relevant buildings within sub-paragraph (3).
- (3) A relevant building is within this sub-paragraph if a member of the landlord group was, at the qualifying time, a landlord under a lease of the relevant building or any part of it.
- (4) For the purposes of this paragraph –
  - (a) “the landlord group” means the relevant landlord and any person associated with the relevant landlord;
  - (b) the net worth of the landlord group at the qualifying time is to be determined in accordance with regulations made by the Secretary of State.
- (5) The Secretary of State may by regulations amend the amount for the time being specified in sub-paragraph (2).
- (6) This paragraph does not apply if, at the qualifying time, the relevant landlord was –
  - (a) a body registered as a social landlord under Chapter 1 of Part 1 of the Housing Act 1996,
  - (b) a local authority (as defined by section 29), or
  - (c) a prescribed person.”

**Member's explanatory statement**

*This amendment provides that no service charge is payable under a qualifying lease in respect of a relevant measure relating to any relevant defect if the landlord met the condition mentioned in the paragraph (relating to net worth).*

Page 226, line 23, leave out from “if” to end of line 28 and insert “the value of the qualifying lease at the qualifying time was less than—

- (a) £325,000, if the premises demised by the qualifying lease are in Greater London;
  - (b) £175,000, in any other case.
- (2) For the purposes of this paragraph the value of a qualifying lease at the qualifying time is its value determined in accordance with paragraph 6 and regulations made under it.”

**Member's explanatory statement**

*This amendment provides that no service charge is payable under a qualifying lease in respect of a relevant measure relating to any relevant defect if the value of the lease at the qualifying time is less than the amount mentioned in the amendment.*

Page 227, line 19, after “time” insert “—

- (a) the value of the qualifying lease at that time is to be determined as if the tenant's total share at that time was 100%;
- (b) ”

**Member's explanatory statement**

*This amendment provides that where the qualifying lease is a shared ownership lease the value of it at the qualifying time is to be determined as if the tenant's share at that time was 100%.*

Page 227, line 29, at end insert—

- “(6A) The regulations may in particular provide that, except in prescribed cases, the value of a qualifying lease at the qualifying time is to be determined by—
- (a) ascertaining the consideration given on the latest disposal of the qualifying lease on the open market to have been made before that time, and
  - (b) if that disposal occurred before 2022, uprating the consideration in accordance with the regulations.”

**Member's explanatory statement**

*This amendment mentions the kind of provision that may be made by regulations under paragraph 6(6).*

Page 227, line 34, leave out sub-paragraph (1) and insert—

- “(1) A relevant service charge which would otherwise be payable under a qualifying lease 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 in the period of 12 months ending with the day on which the service charge fell due,
- does not exceed one tenth of the permitted maximum.”

**Member's explanatory statement**

*This amendment removes the existing power to make regulations, and provides that a service charge in respect of a relevant measure is payable only so far as the total of such service charges in any 12 month period does not exceed one tenth of the permitted maximum.*

Page 227, line 39, at end insert –

““relevant service charge” means a service charge under a qualifying lease in respect of a relevant measure relating to any relevant defect.”

**Member's explanatory statement**

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

Page 228, line 3, leave out from “remediation” to end of line 4

**Member's explanatory statement**

*This amendment removes the condition that a tenant under the qualifying lease was resident at the qualifying time.*

Page 228, line 5, leave out from “remediation” to end of line 6 and insert “means the removal or replacement of any part of a cladding system that –

- (a) forms the outer wall of an external wall system, and
- (b) is unsafe.”

**Member's explanatory statement**

*This amendment inserts a definition of “cladding remediation” (and removes the power to define that expression).*

Page 228, line 9, leave out “expenses” and insert “or other professional services”

**Member's explanatory statement**

*This amendment provides that this paragraph applies to legal or other professional services relating to liability or potential liability of a person in respect of a relevant defect.*

Page 228, line 11, leave out from “paragraph” to “in” in line 12 and insert “the reference to services includes services provided”

**Member's explanatory statement**

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

Page 228, line 18, after “to” insert “4, 8 and”

**Member's explanatory statement**

*This amendment clarifies the paragraphs of this Schedule to which the provisions in this paragraph apply.*

Page 228, line 41, leave out “qualifying”

**Member's explanatory statement**

*This amendment is consequential on the amendment in the name of the Minister at page 225, line 26.*

Page 229, line 2, leave out “qualifying”

***Member’s explanatory statement***

*This amendment is consequential on the amendment in the name of the Minister at page 225, line 26.*

Page 229, line 5, at end insert –

- “(4) The Secretary of State may by regulations modify the application of this paragraph as it applies in relation to a lease of premises that do not include a dwelling.”

***Member’s explanatory statement***

*This amendment is consequential on the amendment in the name of the Minister at page 225, line 26.*

Page 229, leave out line 19

***Member’s explanatory statement***

*This amendment is consequential on the amendment in the name of the Minister at page 225, line 10 inserting a definition of “prescribed”.*

Page 229, line 21, at end insert –

*“Presumption: qualifying lease*

- 12A(1) This paragraph applies in relation to a lease that meets the conditions in paragraphs (a) to (c) of section 121(2).
- (2) The lease is to be treated for the purposes of this Schedule as a qualifying lease unless –
- (a) the landlord under the lease has taken all reasonable steps (and any prescribed steps) to obtain a qualifying lease certificate from a tenant under the lease, and
  - (b) no such certificate has been provided to the landlord.
- (3) In this paragraph “qualifying lease certificate” means a certificate, complying with any prescribed requirements, that the condition in section 121(2)(d) was met in relation to the lease at the qualifying time.
- (4) The requirements that may be prescribed include requirements as to –
- (a) the information to be provided in the certificate,
  - (b) the form of the certificate, and
  - (c) the execution of the certificate.

*Presumptions relating to landlord under qualifying lease*

- 12B(1) The person who was the landlord under a qualifying lease at the qualifying time (“the relevant landlord”) is to be treated for the purposes of this Schedule as having met the contribution condition (as defined by paragraph 3A) unless the landlord under the lease provides to the tenant under the lease a certificate, complying with any prescribed requirements, that the relevant landlord did not meet that condition.

**Schedule 9 - continued**

- (2) The Secretary of State may by regulations provide that (in some or all cases) the condition in paragraph 2(1) is to be treated for the purposes of this Schedule as met in relation to a lease to which paragraph 2 applies unless the landlord under the lease provides to the tenant under the lease a certificate that complies with any prescribed requirements.
- (3) The requirements that may be prescribed include requirements as to—
  - (a) the information to be provided in the certificate,
  - (b) the form of the certificate, and
  - (c) the execution of the certificate.”

**Member’s explanatory statement**

*This amendment provides that certain leases are taken to be qualifying leases unless steps are taken without the tenant providing a certificate, and landlords are taken to have met the contribution condition, or the condition in paragraph 2, unless they provide a certificate.*

Page 229, line 28, leave out sub-paragraph (3)

**Member’s explanatory statement**

*This amendment is consequential on the amendment in the name of the Minister at page 225, line 10 inserting a definition of “prescribed”.*

Page 229, line 28, at end insert—

*“Information from landlords*

- 13A(1) The Secretary of State may by regulations make provision requiring a relevant landlord to give prescribed information or documents to a relevant tenant or other prescribed person.
- (2) Information or documents may be prescribed if they relate to any matter with which this Schedule is concerned.
- (3) The regulations may require the information or documents to be given in a prescribed way.
- (4) The regulations may provide that where a relevant landlord fails to comply with the regulations, prescribed costs—
  - (a) are not to be regarded as relevant costs to be taken into account in determining the amount of a service charge payable under a relevant lease, and
  - (b) must not be met from a relevant reserve fund.
- (5) The regulations may make provision for and in connection with an application to the First-tier Tribunal for an order—
  - (a) determining whether a relevant landlord has failed to comply with the regulations, and
  - (b) if so, requiring the relevant landlord to provide specified information or documents to a specified person by a specified time.

“Specified” here means specified in the order.

- (6) Nothing in sub-paragraph (5) limits the effect of regulations made by virtue of sub-paragraph (4).

**Schedule 9 - continued**

- (7) Information or documents may be specified in an order under subparagraph (5) only if the regulations require them to be provided to the specified person.
- (8) In this paragraph—
- “relevant costs” has the meaning given by section 18 of the Landlord and Tenant Act 1985 (and this applies in relation to a lease of premises that does not include a dwelling as it applies in relation to a lease of a dwelling);
  - “relevant landlord” means a landlord under a relevant lease;
  - “relevant lease” means a lease of premises in a relevant building;
  - “relevant reserve fund” has the meaning given by paragraph 10;
  - “relevant tenant” means a tenant under a relevant lease.”

***Member’s explanatory statement***

*This amendment confers a power to make regulations, requiring landlords to provide certain information and documents, and also enabling an application to be made to the First-tier Tribunal about the provision of information and documents.*

Page 229, line 28, at end insert—

“13B In section 21 of the Landlord and Tenant Act 1985 (service charge information), in subsection (6A) (inserted by section 115), after “2022)” insert “or relevant buildings (as defined by section 120 of that Act).”

***Member’s explanatory statement***

*This amendment provides that regulations under section 21 of the Landlord and Tenant Act 1985 (service charge information) need not make the provision mentioned in subsection (2) or (3) of that section in relation to relevant buildings.*

**Clause 125**

LORD GREENHALGH

Page 131, line 4, after “Tribunal” insert “on the application of an interested person”

***Member’s explanatory statement***

*This amendment is a drafting change.*

Page 131, line 10, at end insert—

“(3A) In subsection (3) the reference to a landlord under a lease includes any person who is party to the lease otherwise than as landlord or tenant.”

***Member’s explanatory statement***

*This amendment provides that where repairing obligations under a lease are placed on a person other than the landlord (or tenant), the person falls within the definition of “relevant landlord”, and accordingly a remediation order may be made against them.*

Page 131, leave out line 11 and insert “In this section “interested person”, in relation to a relevant building, means—”

**Member's explanatory statement**

*This amendment is a drafting change.*

Page 131, line 16, at end insert –

“(ca) a person with a legal or equitable interest in the relevant building or any part of it;”

**Member's explanatory statement**

*This amendment provides that a person with a legal or equitable interest in the building may apply for a remediation order.*

Page 131, line 18, at end insert –

“(6) A decision of the First-tier Tribunal or Upper Tribunal made under or in connection with this section (other than one ordering the payment of a sum) is enforceable with the permission of the county court in the same way as an order of that court.”

**Member's explanatory statement**

*This amendment provides for the enforcement of orders made under this Clause.*

**Clause 126**

## LORD GREENHALGH

Page 131, line 24, after “corporate” insert “or partnership”

**Member's explanatory statement**

*This amendment provides that an order may be made in respect of a partnership.*

Page 131, line 28, after “corporate” insert “or partnership”

**Member's explanatory statement**

*This amendment is consequential on the first amendment of this clause in the name of the Minister.*

Page 131, line 28, leave out from “is” to end of line 29 and insert “–

- (a) a landlord under a lease of the relevant building or any part of it,
- (b) a person who was such a landlord at the qualifying time,
- (c) a developer in relation to the relevant building, or
- (d) a person associated with a person within any of paragraphs (a) to (c).”

**Member's explanatory statement**

*This amendment expands the persons in respect of whom an order may be made.*

Page 131, line 38, at end insert –

““developer”, in relation to a relevant building, means a person who undertook or commissioned the construction or conversion of the building (or part of the building) with a view to granting or disposing of interests in the building or parts of it;”



**Member's explanatory statement**

*This amendment defines "developer" for the purposes of the Clause.*

Page 131, line 39, at end insert –

“(za) the Secretary of State,”

**Member's explanatory statement**

*This amendment provides that "interested person" (who may apply for a remediation contribution order) includes the Secretary of State.*

Page 132, line 6, at end insert –

“(e) any other person prescribed by regulations made by the Secretary of State;”

**Member's explanatory statement**

*This amendment provides that "interested person" includes a person prescribed by regulations.*

Page 132, line 6, at end insert –

““partnership” has the meaning given by section 123;”

**Member's explanatory statement**

*This amendment defines "partnership" for the purposes of the Clause.*

Page 132, line 9, at end insert –

“(6) The Secretary of State may by regulations provide that this section applies, with or without modifications, in relation to a building that would, but for section 120(3), be a relevant building.”

**Member's explanatory statement**

*This amendment provides that regulations may apply the Clause (with or without modifications) in relation to buildings that are not relevant buildings because of Clause 120(3) (enfranchised buildings etc).*

**Clause 127**

LORD GREENHALGH

Page 132, line 18, leave out “the liquidator” and insert “a person acting as an insolvency practitioner in relation to the company”

**Member's explanatory statement**

*This amendment provides that a person acting as an insolvency practitioner in relation to the company may apply for an order under this Clause.*

Page 132, line 19, after “corporate” insert “or partnership”

**Member's explanatory statement**

*This amendment provides that an order under this Clause may be made against a partnership associated with the company that is being wound up.*

Page 132, line 20, at end insert “, or

- (b) to make such payments to a specified person as the court considers to be just and equitable for the purpose of meeting costs incurred or to be incurred in remedying relevant defects mentioned in subsection (1)(b).

Section 126(4) applies for the purposes of this section.”

***Member’s explanatory statement***

*This amendment enables an order under this Clause to require the making of payments to a person specified in the order.*

Page 132, line 23, at end insert –

““act as an insolvency practitioner” has the meaning given by section 388 of the Insolvency Act 1986;”

***Member’s explanatory statement***

*This amendment is consequential on the first amendment to this Clause in the name of the Minister.*

Page 132, line 25, at end insert –

““partnership” has the meaning given by section 123;”

***Member’s explanatory statement***

*This amendment is consequential on the amendment to this Clause at page 132, line 19 in the name of the Minister.*

Page 132, line 27, at end insert –

““specified” means specified in the order.”

***Member’s explanatory statement***

*This amendment is consequential on the amendment to this Clause at page 132, line 20 in the name of the Minister.*

## Clause 128

### LORD GREENHALGH

Page 132, line 31, after “scheme” insert “to be maintained by the Secretary of State, or a person designated by the Secretary of State and acting on the Secretary of State’s behalf,”

***Member’s explanatory statement***

*This amendment is a drafting change.*

Page 132, line 32, at end insert –

- “(1A) A scheme may be established 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,

**Clause 128 - continued**

including securing that safety, or improving that standard, by securing that persons in the building industry remedy defects in buildings or contribute to costs associated with remedying defects in buildings.”

***Member’s explanatory statement***

*This amendment sets out the purposes for which a scheme may be established.*

Page 132, line 35, at end insert “, and

- (b) the conditions that an eligible person must meet in order to become, and remain, a member of the scheme (“membership conditions”),
- and may provide for different categories of membership.”

***Member’s explanatory statement***

*This amendment provides that scheme membership conditions are to be contained in regulations.*

Page 132, line 36, leave out subsections (3) and (4) and insert –

- “(3) The membership conditions that may be prescribed include in particular conditions relating to –
  - (a) the remedying of defects in buildings with which an eligible person has a connection of a prescribed kind;
  - (b) the making of financial contributions towards meeting costs associated with remedying defects in buildings (including buildings with which an eligible person has no connection);
  - (c) the use (or use in prescribed cases) of construction products (or construction products of a prescribed description) of prescribed persons carrying out activities in relation to construction products;
  - (d) the provision of information to the Secretary of State or any other person;
  - (e) the competence or conduct of any individual connected with an eligible person (for example, any director or senior manager of an eligible person) or any person with whom an eligible person contracts;
  - (f) whether persons with whom an eligible person contracts are members of a scheme.

In paragraph (e) “conduct” includes conduct occurring before the coming into force of this section.

- (4) The descriptions of persons prescribed by virtue of subsection (3)(c) may in particular be prescribed by reference to –
  - (a) being eligible to be members of a scheme and not being members of that scheme;
  - (b) their conduct in relation to remedying defects in buildings or contributing to costs associated with remedying defects in buildings.

**Clause 128 - continued**

- (4A) The membership conditions that may be prescribed by virtue of subsection (3)(c) include in particular a condition requiring an eligible person to ensure that no prescribed product of prescribed persons carrying out activities in relation to construction products is used in prescribed cases.”

***Member’s explanatory statement***

*This amendment sets out various matters that may, in particular, be the subject of membership conditions for a scheme established under this Clause.*

Page 133, line 6, at end insert –

- “(6) Regulations may make provision about the keeping and publication of other lists.”

***Member’s explanatory statement***

*This amendment provides that regulations may make provision about the keeping and publication of other lists.*

**Clause 129**

LORD GREENHALGH

Page 133, line 9, leave out subsection (2)

***Member’s explanatory statement***

*This amendment is a drafting change.*

Page 133, line 12, at end insert –

- “(2A) Regulations may make provision about –
- (a) applications for membership of a scheme;
  - (b) renewal of membership at prescribed intervals;
  - (c) termination of a person’s membership;
  - (d) the suspension of a person from membership.”

***Member’s explanatory statement***

*This amendment and the next amendment to this Clause in the name of the Minister provide that provision about procedure relating to a scheme is to be set out in regulations rather than in a document published by the Secretary of State.*

Page 133, line 18, leave out subsection (4)

***Member’s explanatory statement***

*See the explanatory statement relating to the previous amendment to this Clause in the name of the Minister.*

Page 133, line 25, leave out “Membership criteria may” and insert “Regulations may provide for membership conditions to”

**Member's explanatory statement**

*This amendment is consequential on the Minister's amendment to Clause 128 at page 132, line 35.*

Page 133, line 28, at end insert –

“(5A) Regulations may make provision about the determination of disputes.”

**Member's explanatory statement**

*This amendment provides that regulations under Clause 128 may make provision about the determination of disputes.*

Page 133, line 29, leave out subsection (6)

**Member's explanatory statement**

*This amendment is consequential on the Minister's amendment to Clause 128 at page 132, line 35.*

Page 133, line 29, at end insert –

“(6A) Regulations may make provision about the termination of a scheme.”

**Member's explanatory statement**

*This amendment provides that regulations under Clause 128 may make provision about the termination of a scheme established under that Clause.*

Page 133, line 35, leave out “on” and insert “out”

**Member's explanatory statement**

*This amendment is a drafting change.*

Page 133, line 36, leave out from “products” to “in” in line 37

**Member's explanatory statement**

*This amendment removes the reference to Schedule 12 in the definition of “persons carrying out activities in relation to construction products” with a view to a definition being inserted into the Clause.*

Page 133, line 37, at end insert –

““construction product” has the meaning given by regulations;  
“persons carrying out activities in relation to construction products”  
include (without limitation) –  
(a) a manufacturer of construction products,  
(b) a person who markets or supplies construction products to  
others, and  
(c) a person who imports construction products into the United  
Kingdom for use, marketing or supply;”

**Member's explanatory statement**

*This amendment defines “construction product” and “persons carrying out activities in relation to construction products” for the purposes of Clause 128.*

**Clause 130**

LORD GREENHALGH

Page 134, line 7, at end insert –

- “(1A) The descriptions of persons which may be prescribed include in particular persons who –
- (a) are eligible to be members of a scheme established under section 128, and
  - (b) are not members of that scheme.”

***Member’s explanatory statement***

*This amendment provides that the descriptions of persons whom regulations may prohibit from carrying out development under this Clause include, in particular, persons who are eligible to be members of a scheme established under Clause 128 but are not members of that scheme.*

Page 134, line 8, after “prohibition” insert “under the regulations”

***Member’s explanatory statement***

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

Page 134, line 11, at end insert –

“including securing that safety, or improving that standard, by securing that persons in the building industry remedy defects in buildings or contribute to costs associated with remedying defects in buildings.”

***Member’s explanatory statement***

*This amendment clarifies the purposes for which a prohibition may be imposed.*

Page 134, line 17, leave out “the proposed beginning of”

***Member’s explanatory statement***

*This amendment has the effect of allowing regulations to require notifications to be given about development other than notifications relating only to the proposed beginning of development.*

Page 134, line 26, leave out paragraph (b)

***Member’s explanatory statement***

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

### Clause 131

LORD GREENHALGH

Page 134, line 37, at end insert –

- “(1A) The descriptions of persons which may be prescribed include in particular persons who –
- (a) are eligible to be members of a scheme established under section 128, and
  - (b) are not members of that scheme.”

***Member’s explanatory statement***

*This amendment provides that the descriptions of persons in relation to whom regulations may impose a building control prohibition under this Clause include, in particular, persons who are eligible to be members of a scheme established under Clause 128 but are not members of that scheme.*

Page 134, line 38, after “A” insert “building control”

***Member’s explanatory statement***

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

Page 135, line 3, at end insert –

- “including securing that safety, or improving that standard, by securing that persons in the building industry remedy defects in buildings or contribute to costs associated with remedying defects in buildings.”

***Member’s explanatory statement***

*This amendment clarifies the purposes for which a prohibition may be imposed.*

### Clause 132

LORD GREENHALGH

Page 136, line 11, leave out “relates to a building in England and”

***Member’s explanatory statement***

*This amendment has the effect of applying this clause to Wales.*

### After Clause 133

LORD GREENHALGH

Insert the following new Clause –

**“Order for information in connection with building liability order**

- (1) A person of a prescribed description may apply to the High Court for an information order.

**After Clause 133 - continued**

- (2) An “information order” is an order requiring a specified body corporate to give, by a specified time, specified information or documents relating to persons who are or have at any time in a specified period been, associates of the body corporate.
- (3) An information order may be made only if it appears to the court—
- (a) that the body corporate is subject to a relevant liability (within the meaning of section 132), and
  - (b) that it is appropriate to require the information or documents to be provided for the purpose of enabling the applicant (or the applicant and others) to make, or consider whether to make, an application for a building liability order.
- (4) In this section—
- “associate” has the meaning given by section 133;
  - “building liability order”: see section 132;
  - “prescribed” means prescribed by regulations made by the Secretary of State;
  - “specified” means specified in the information order.”

***Member’s explanatory statement***

*This new Clause provides that a person prescribed by regulations may make an application to the High Court for an order requiring a body corporate to give information relating to persons who are associates of the body corporate and sets out when the High Court may make the order.*

**Clause 136**

LORD GREENHALGH

Page 142, line 3, leave out from “section” to end of line 5 and insert “applies in relation to a claim which, before this section came into force, was settled by agreement between the parties or finally determined by a court or arbitration (whether on the basis of limitation or otherwise).”

***Member’s explanatory statement***

*This amendment is a drafting change.*

**Clause 139**

LORD GREENHALGH

Page 144, line 5, after “converted” insert “, or to which any other works have been carried out,”

***Member’s explanatory statement***

*This amendment clarifies that a home created by, for example, extending an existing building will be a “new build home” for the purposes of the new homes ombudsman scheme.*

Page 144, line 6, after “conversion” insert “or works”



**Member's explanatory statement**

*This amendment is consequential on the amendment to page 144, line 5 that appears in the Minister's name.*

Page 144, line 29, after “conversion of” insert “, or carrying out of any other works to,”

**Member's explanatory statement**

*This amendment clarifies that “developer” for the purposes of the new homes ombudsman scheme will include a person who, for example, creates a home by extending an existing building.*

Page 144, line 31, after “conversion of” insert “, or carrying out of any other works to,”

**Member's explanatory statement**

*This amendment clarifies that “developer” for the purposes of the new homes ombudsman scheme will include a person who, for example, extends an existing building so as to change the number of homes in it.*

Page 144, line 34, leave out “the case of a conversion” and insert “a case falling”

**Member's explanatory statement**

*This amendment is consequential on the amendment to page 144, line 31 that appears in the Minister's name.*

**After Clause 144**

LORD GREENHALGH

Insert the following new Clause –

**“New build home warranties**

- (1) This section applies where a person (“the developer”) carries out a development in England that results in the creation of one or more dwellings (“new build homes”).
- (2) The developer must, at the time of or before granting or disposing of a relevant interest in a new build home –
  - (a) provide to the purchaser a new build home warranty for the new build home, and
  - (b) provide to a prescribed person a new build home warranty for any common parts.
- (3) A “new build home warranty” for a thing is an arrangement, satisfying any requirements under subsection (4), under which –
  - (a) the developer agrees, in specified circumstances, to remedy any specified defect (or any defect) in the thing occurring in a specified period, and
  - (b) a prescribed person obtains the benefit of a policy of insurance relating to specified defects (or any defects) in the thing.

“Specified” here means specified in the arrangement.

- (4) The Secretary of State may by regulations impose requirements about new build home warranties, including in particular requirements as to –

**After Clause 144 - continued**

- (a) the kinds of defect which the developer must agree to remedy;
  - (b) the circumstances in which the developer must agree to remedy a defect (including the minimum duration of the period mentioned in subsection (3)(a));
  - (c) the developer agreeing to meet prescribed costs incurred by a person occupying a new build home, where works to remedy a defect are carried out;
  - (d) the policy of insurance (including risks that must be covered, the minimum amount of cover, the minimum duration of the period of cover, and the maximum amount of any excess);
  - (e) the solvency of the insurer or underwriter;
  - (f) the standard of service provided by or on behalf of the insurer in relation to the policy;
  - (g) the ability of a person who has the benefit of the warranty to transfer that benefit to another person.
- (5) The regulations must provide that the period of cover under the policy of insurance must be at least 15 years beginning with the day on which the relevant interest is granted or disposed of.

- (6) In this section—

“carries out a development”: the reference to a person carrying out a development is to undertaking or commissioning—

- (a) the construction of a building, or
- (b) the conversion of, or carrying out of any other works to, a building,

with a view to granting, or disposing of, relevant interests in one or more dwellings created as a result of the construction, conversion or carrying out of works;

“common parts”, in relation to a new build home, means any part of a building, where—

- (a) that part is provided for the use, benefit and enjoyment of the residents of the new build home and the residents of other dwellings (whether alone or with other persons), and
- (b) the right to use that part is conferred in connection with the grant or disposal of the relevant interest in the new build home;

“defect”: any reference to a defect includes, in relation to land, contamination;

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

“purchaser” means the person to whom the relevant interest is granted or disposed of;

“relevant interest” means a legal estate which is—

- (a) an estate in fee simple absolute in possession, or
- (b) 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 new Clause imposes, on a developer of new build homes, a requirement to provide a "new build home warranty" complying with the requirements imposed under the clause.*

Insert the following new Clause—

**"New build home warranties: financial penalties**

- (1) The Secretary of State may by regulations make provision for and in connection with the imposition of a financial penalty in cases where the Secretary of State, or a person designated by the Secretary of State, is satisfied beyond reasonable doubt that a person has, without reasonable excuse, failed to comply with section (*New build home warranties*)(2).
- (2) The regulations may include provision—
  - (a) about the procedure to be followed in imposing penalties;
  - (b) about the amount of penalties;
  - (c) for the imposition of interest or additional penalties for late payment;
  - (d) conferring rights of appeal against penalties.
- (3) The regulations must provide that the amount of a financial penalty (excluding interest or any additional penalty) may not exceed the greater of—
  - (a) 10% of the value of the relevant interest at the time the person granted or disposed of the relevant interest, and
  - (b) £10,000."

**Member's explanatory statement**

*This new Clause confers power to impose a financial penalty for breach of the duty to provide a "new build home warranty".*

**After Clause 145**

LORD GREENHALGH

Insert the following new Clause—

*"Liability relating to construction products*

**Liability relating to construction products: general definitions**

In this section, section (*Liability relating to construction products*) and (*Liability for past defaults relating to cladding products*)—

"the 1991 Regulations" means the Construction Products Regulations 1991 (S.I. 1991/1620);

"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);

"construction products regulations" means regulations under paragraph 1 of Schedule 12;

"construction product requirement" means a requirement under—

- (a) construction products regulations,
- (b) the 2011 Regulation, or
- (c) the 2019 Regulations;

**After Clause 145 - continued**

“relevant building” means—

- (a) a building which consists of a dwelling, or
- (b) a building which contains two or more dwellings;

“relevant interest”, in relation to a building in England and Wales, 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 interest”, in relation to a building in Scotland, means—

- (a) in a case where the building consists of a dwelling, any right or interest (including a servitude or heritable security) in or over the building, and
- (b) in a case where the building contains one or more dwellings, any right or interest (including a servitude or heritable security) in or over—
  - (i) the building, or
  - (ii) any dwelling contained in the building;

“requirement” includes a prohibition or restriction.”

***Member’s explanatory statement***

*This new Clause contains definitions relevant to the next two new Clauses tabled by the Minister.*

Insert the following new Clause—

**“Liability relating to construction products**

- (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) a person fails to comply with a construction product requirement in relation to a construction product,
  - (b) a person who markets or supplies a construction product makes a misleading statement in relation to it, or
  - (c) a person manufactures a construction product that is inherently defective.
- (3) Condition B is that, after Condition A is met, the construction product referred to in subsection (2)(a), (b) or (c) is installed in, or applied or attached to, a relevant building in the course of works carried out in the construction of, or otherwise in relation to, the building.
- (4) Condition C is that, when those works are completed—
  - (a) in a case where the relevant building consists of a dwelling, the building is unfit for habitation, or
  - (b) in a case where the relevant building contains one or more dwellings, a dwelling contained in the building is unfit for habitation.

**After Clause 145 - continued**

- (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 being 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 in relation to the relevant building 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) A term of an agreement which purports to exclude or restrict, or has the effect of excluding or restricting, any liability arising under this section is void.
- (8) For the purposes of section 10B(1) of the Limitation Act 1980 and section 18ZD(1) of the Prescription and Limitation (Scotland) Act 1973, 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.
- (9) In subsection (2)(a), “construction product”—
  - (a) in relation to a construction product requirement under construction products regulations, has the meaning specified in those regulations;
  - (b) in relation to a construction product requirement under the 2011 Regulation, has the meaning specified in the 2011 Regulation;
  - (c) in relation to a construction product requirement under the 2019 Regulations, has the meaning specified in the 2011 Regulation as it had effect immediately before IP completion day.
- (10) In subsection (2)(b) and (c) “construction product” has the meaning specified in the 2011 Regulation.”

***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 for past defaults 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 with a cladding product requirement in relation to a cladding product,
  - (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.

**After Clause 145 - continued**

- (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 the construction of, or otherwise in relation to, the building.
- (4) Condition C is that, when those works are completed—
  - (a) in a case where the relevant building consists of a dwelling, the building is unfit for habitation, or
  - (b) in a case where the relevant building contains one or more dwellings, a dwelling contained in the building is 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 being 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 in relation to the relevant building 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) A term of an agreement which purports to exclude or restrict, or has the effect of excluding or restricting, any liability arising under this section is void.
- (8) For the purposes of section 10B(2) of the Limitation Act 1980 and section 18ZD(2) of the Prescription and Limitation (Scotland) Act 1973, 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.
- (9) Where an action is brought under this section in England and Wales that, but for section 10B(2) of the Limitation Act 1980, would have been barred by that Act, a court hearing the action must dismiss it in relation to any defendant if satisfied that it is necessary to do so to avoid a breach of that defendant's Convention rights.
- (10) Where an action is brought under this section in Scotland that, but for section 18ZD(2) of the Prescription and Limitation (Scotland) Act 1973, would have been barred by that Act, a court hearing the action must dismiss it in relation to any defender if satisfied that it is necessary to do so to avoid a breach of that defender's Convention rights.
- (11) In this section “cladding product requirement” means—
  - (a) in relation to a time before IP completion day, a requirement relating to a cladding product under—
    - (i) the 1991 Regulations, or
    - (ii) the 2011 Regulation as it had effect in EU law at that time, and
  - (b) in relation to a time after IP completion day, a requirement relating to a cladding product under—
    - (i) the 2011 Regulation, or
    - (ii) the 2019 Regulations.

**After Clause 145 - continued**

(12) In this section—

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

“Convention rights” has the same meaning as in the Human Rights Act 1998;

“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.”

**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 relating to construction products: limitation in England and Wales**

In the Limitation Act 1980, after section 10A insert—

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

- (1) An action under section (*Liability relating to construction products*) of the Building Safety Act 2022 shall not be brought after the expiration of 15 years from the date on which the right of action accrued.
- (2) An action under section (*Liability for past defaults relating to cladding products*) of the Building Safety Act 2022 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.
- (3) In a case where—
  - (a) a right of action under section (*Liability for past defaults relating to cladding products*) of the Building Safety Act 2022 accrued before the commencement date, and
  - (b) 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 for past defaults 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 in England and Wales for the rights of action created by the previous two new clauses tabled by the Minister.*

Insert the following new Clause—

**“Liability relating to construction products: limitation in Scotland**

- (1) The Prescription and Limitation (Scotland) Act 1973 is amended as follows.
- (2) After section 18ZC insert—

**“18ZD Actions relating to construction products**

- (1) An action under section (*Liability relating to construction products*) of the Building Safety Act 2022 may not be brought after the expiration of 15 years from the date on which the right of action accrued (see subsection (8) of that section).
- (2) An action under section (*Liability for past defaults relating to cladding products*) of the Building Safety Act 2022 may 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 (see subsection (8) of that section), 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.
- (3) In a case where—
  - (a) a right of action under section (*Liability for past defaults relating to cladding products*) of the Building Safety Act 2022 accrued before the commencement date, and
  - (b) 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 for past defaults relating to cladding products*) of the Building Safety Act 2022 came into force.
- (5) No other period of limitation specified by this Part of this Act applies in relation to an action referred to in subsection (1) or (2).
- (6) In the computation of a period of time specified in subsection (1) or (2), there is to be disregarded any time during which the person seeking to bring the action (P)—
  - (a) was under a legal disability by reason of nonage or unsoundness of mind, or
  - (b) failed to bring the action by reason of—
    - (i) fraud on the part of the person against whom the action is to be brought (D) or the part of any person acting on D's behalf, or
    - (ii) error induced by words or conduct of D or any person acting on D's behalf,
 (but not including, for the purposes of paragraph (b), any time occurring after P could with reasonable diligence have discovered the fraud or error mentioned in that paragraph).



**After Clause 145 - continued**

- (7) For the purposes of subsection (6)(b), it does not matter whether D, or the person acting on D's behalf, intended the fraud or the words or conduct to cause P to fail to bring the action."
- (3) In section 7(2) (extinction of obligations by prescriptive periods of twenty years), at the end insert "or any obligation to pay damages arising from liability under section (*Liability relating to construction products*) or (*Liability for past defaults relating to cladding products*) of the Building Safety Act 2022 (see section 18ZD of this Act)."
- (4) In section 19CA(1) (interruption of limitation period: arbitration), after "18ZC(2)" insert ", 18ZD(1) or (2)".
- (5) In Schedule 1, in paragraph 2 (exceptions from the 5 year prescriptive period under section 6), after paragraph (ga) insert—  
 "(gb) to any obligation to pay damages arising from liability under section (*Liability relating to construction products*) or (*Liability for past defaults relating to cladding products*) of the Building Safety Act 2022;".

**Member's explanatory statement**

*This amendment provides for the limitation periods in Scotland for the proposed new rights of action relating to construction products.*

Insert the following new Clause—

*"Construction products: costs contribution orders*

**Costs contribution orders: general definitions**

In this section and sections (*Costs contribution orders made by courts*) to (*Costs contribution orders: assessments*)—

"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);

"the 2020 Regulations" means the Construction Products (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1359);

"construction product"—

- (a) in relation to a construction product requirement under construction products regulations, has the meaning specified in those regulations;
- (b) in relation to a construction product requirement under the 2011 Regulation, has the meaning specified in the 2011 Regulation (or, in Northern Ireland, in the 2011 Regulation as having effect in EU law from time to time);
- (c) in relation to a construction product requirement under the 2019 Regulations, has the meaning specified in the 2011 Regulation as it had effect immediately before IP completion day;

**After Clause 145 - continued**

- (d) in relation to a construction product requirement under the 2020 Regulations, has the meaning given by regulation 2 of those Regulations;

“construction products regulations” means regulations under paragraph 1 of Schedule 12;

“construction product requirement”, in England and Wales or Scotland, means a requirement under –

- (a) construction products regulations,
- (b) the 2011 Regulation, or
- (c) the 2019 Regulations;

“construction product requirement”, in Northern Ireland, means a requirement under –

- (a) construction product regulations,
- (b) the 2011 Regulation as having effect from time to time in EU law,
- (c) the 2019 Regulations, or
- (d) the 2020 Regulations;

references to an “interest” in a building or dwelling include –

- (a) in England and Wales, any legal or equitable interest in the building or dwelling;
- (b) in Scotland, any right or interest (including a servitude or heritable security) in or over the building or dwelling;
- (c) in Northern Ireland, any estate within the meaning given by section 45(2) of the Interpretation Act (Northern Ireland) 1954 in the building or dwelling;

“relevant building” means –

- (a) a building which consists of a dwelling, or
- (b) a building which contains two or more dwellings;

“requirement” includes a prohibition or restriction.”

***Member’s explanatory statement***

*This new Clause contains definitions relevant to the new Clauses tabled by the Minister in relation to costs contribution orders in respect of construction products.*

Insert the following new Clause –

**“Costs contribution orders made by courts**

- (1) The Secretary of State may by regulations make provision for courts to make costs contribution orders on the application of the Secretary of State.
- (2) The regulations may only make provision for the making of costs contribution orders under this section in cases where –
  - (a) Conditions A to D are met, and
  - (b) any prescribed conditions are met.
- (3) Condition A is that a person (“the defaulter”) is convicted of an offence consisting of a failure to comply with a construction product requirement in relation to a construction product.

**After Clause 145 - continued**

- (4) Condition B is that, after the failure to comply referred to in subsection (3), the construction product is installed in, or applied or attached to, a relevant building in the course of works carried out in the construction of, or otherwise in relation to, the building.
- (5) Condition C is that, when those works are completed—
  - (a) in a case where the relevant building consists of a dwelling, the building is unfit for habitation, or
  - (b) in a case where the relevant building contains one or more dwellings, a dwelling contained in the building is unfit for habitation.
- (6) Condition D is that the failure to comply referred to in subsection (3) was the cause, or one of the causes, of the building or dwelling being unfit for habitation.
- (7) A “costs contribution order” under this section is an order requiring the defaulter to pay an amount to a person with a prescribed interest in the building or any dwelling contained in the building.
- (8) Regulations under this section must provide for the amount to be paid to a person under a costs contribution order under this section to be such amount as the court making the order considers just and equitable in respect of the costs that the person has reasonably incurred, or in the view of the court is likely to reasonably incur, in respect of works to make the building or dwelling fit for habitation.
- (9) The regulations may make provision as to the matters which may or must be taken into account by a court in determining—
  - (a) whether, against whom and in favour of whom to make a costs contribution order under this section;
  - (b) the amount required to be paid by a person under a costs contribution order under this section.
- (10) The regulations may make provision in relation to—
  - (a) enforcement of a costs contribution order under this section;
  - (b) court powers to order the defaulter to pay—
    - (i) any costs incurred by the Secretary of State under regulations under section (*Costs contribution orders: assessments*)(assessments) in respect of the application, and
    - (ii) any costs incurred by the Secretary of State in making the application.
- (11) The regulations may make provision about how a costs contribution order under this section relates to other remedies, including in particular—
  - (a) provision to secure that, taking a costs contribution order under this section together with other remedies—
    - (i) a person does not incur liability more than once in respect of the same costs;
    - (ii) a person is not entitled to be reimbursed more than once for the same costs;

**After Clause 145 - continued**

- (b) provision preventing a person to whom any amount is payable under a costs contribution order under this section from pursuing any other legal remedy for the recovery of such an amount.
- (12) In this section “prescribed” means prescribed by regulations under this section.”

***Member’s explanatory statement***

*This new Clause confers a regulation-making power for the courts to make costs contribution orders.*

Insert the following new Clause –

**“Costs contribution orders made by the Secretary of State**

- (1) The Secretary of State may by regulations make provision for the Secretary of State to make costs contribution orders.
- (2) The regulations may only make provision for the making of costs contribution orders in cases where –
  - (a) Conditions A to D are met, and
  - (b) any prescribed conditions are met.
- (3) Condition A is that a person (“the defaulter”) is convicted of an offence consisting of a failure to comply with a construction product requirement in relation to a construction product.
- (4) Condition B is that, after the failure to comply referred to in subsection (3), the construction product is installed in, or applied or attached to, a relevant building in the course of works carried out in the construction of, or otherwise in relation to, the building.
- (5) Condition C is that, when those works are completed –
  - (a) in a case where the relevant building consists of a dwelling, the building is unfit for habitation, or
  - (b) in a case where the relevant building contains one or more dwellings, a dwelling contained in the building is unfit for habitation.
- (6) Condition D is that the failure to comply referred to in subsection (3) was the cause, or one of the causes, of the building or dwelling being unfit for habitation.
- (7) A “costs contribution order” under this section is an order requiring the defaulter to make a payment to a person with a prescribed interest in the building or any dwelling contained in the building.
- (8) Regulations under this section must provide for the amount to be paid to a person under a costs contribution order under this section to be such amount as 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.
- (9) The regulations may make provision as to the matters which may or must be taken into account by the Secretary of State in determining –

**After Clause 145 - continued**

- (a) whether, against whom, and in favour of whom, to make a costs contribution order under this section;
  - (b) the amount required to be paid by a person under a costs contribution order under this section.
- (10) The regulations may make provision for the Secretary of State to issue a warning notice to a person before determining whether to make a costs contribution order under this section against that person.
- (11) The regulations may make provision requiring that a costs contribution order under this section –
- (a) be made in a prescribed form;
  - (b) contain prescribed information.
- (12) The regulations may make provision about service of a costs contribution order under this section including –
- (a) how an order is to be served;
  - (b) when an order is to be taken as having been served;
  - (c) the persons on whom an order must be served.
- (13) The regulations may make provision in relation to –
- (a) enforcement of a costs contribution order made under this section (including enforcement by the Secretary of State);
  - (b) powers of the Secretary of State to order the defaulter to pay any costs incurred by the Secretary of State under section (*Costs contribution orders: assessments*) in respect of a costs contribution order under this section.
- (14) The regulations may make provision about how a costs contribution order under this section relates to other remedies, including in particular –
- (a) provision to secure that, taking a costs contribution order under this section together with other remedies –
    - (i) a person does not incur liability more than once in respect of the same costs;
    - (ii) a person is not entitled to be reimbursed more than once for the same costs;
  - (b) provision preventing a person to whom any amount is payable under a costs contribution order under this section from pursuing any other legal remedy for the recovery of such an amount.
- (15) The regulations may make provision for persons to apply to the Secretary of State for a review of a costs contribution order under this section.
- (16) The regulations may make provision for appeals to a court or tribunal in relation to –
- (a) a decision of the Secretary of State to make or not make a costs contribution order under this section;
  - (b) a refusal by the Secretary of State to review a costs contribution order under this section;
  - (c) the outcome of a review by the Secretary of State of a costs contribution order under this section.

**After Clause 145 - continued**

- (17) The regulations may in particular include provision suspending a requirement to pay an amount due under a costs contribution order under this section pending the determination or withdrawal of an appeal or the determination of a review.
- (18) In this section “prescribed” means prescribed by regulations under this section.”

***Member’s explanatory statement***

*This new Clause confers a regulation-making power for the Secretary of State to make costs contribution orders.*

Insert the following new Clause –

**“Costs contribution orders: assessments**

- (1) For the purposes of sections (*Costs contribution orders made by courts*) and (*Costs contribution orders made by Secretary of State*), the Secretary of State may by regulations make provision for the Secretary of State to appoint persons to assess –
- (a) whether the conditions for the imposition of a costs contribution order under either of those sections are met;
  - (b) the works required to make a building or dwelling fit for habitation;
  - (c) what interest a person has in a building or dwelling;
  - (d) the costs that a person has reasonably incurred or is likely to reasonably incur in respect of works referred to in paragraph (b);
  - (e) the amount that a person should be required to pay under a costs contribution order.
- (2) The regulations may include provision about the criteria to be met by a person before they may be appointed as an assessor.
- (3) The regulations may make provision about assessments, including provision –
- (a) conferring power on an assessor to require that persons provide such information as the assessor may reasonably require for the purposes of an assessment;
  - (b) for the provision of information by an assessor to the Secretary of State (including any information provided under paragraph (a)).
- (4) Regulations under subsection (3)(a) may include provision for criminal offences relating to a failure to provide information, or to the provision of false or misleading information.
- (5) Regulations under subsection (3)(a) creating a criminal offence must have the effect that –
- (a) the offence is –
    - (i) triable summarily only, or
    - (ii) triable summarily or on indictment,
  - (b) the offence is punishable only –
    - (i) with a fine, or
    - (ii) with a term of imprisonment or a fine (or both),

**After Clause 145 - continued**

- (c) where the offence is triable summarily only, any fine with which the offence is punishable in Scotland or Northern Ireland does not exceed level 5 on the standard scale,
  - (d) where the offence is triable summarily or on indictment, any fine with which the offence is punishable on summary conviction in Scotland or Northern Ireland does not exceed the statutory maximum, and
  - (e) any term of imprisonment with which the offence is punishable on summary conviction does not exceed –
    - (i) in England and Wales, the relevant period,
    - (ii) in Scotland, 12 months, and
    - (iii) in Northern Ireland, 6 months.
- (6) In subsection (5)(e)(i), “the relevant period” means –
- (a) in relation to an offence that is triable summarily only –
    - (i) where the offence is committed before the coming into force of section 281 of the Criminal Justice Act 2003, 6 months, and
    - (ii) where the offence is committed after that time, 51 weeks;
  - (b) in relation to an offence that is triable summarily or on indictment –
    - (i) where the offence is committed before the coming into force of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020, 6 months, and
    - (ii) where the offence is committed after that time, 12 months.
- (7) Regulations under subsection (3)(b) may make provision for the purpose of securing that there is (taking into account any power or duty to provide information under the regulations) no contravention of the data protection legislation.
- (8) In subsection (7), “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 new Clause confers a regulation-making power relating to assessments for the purposes of costs contribution orders.*

**Schedule 12**

LORD GREENHALGH

Page 242, line 22, at end insert –

- “(2) Construction products regulations may under paragraph 20(1)(c) make consequential provision amending section (*Liability relating to construction products*), which may in particular include the omission or amendment of subsection (2)(b) and (c) of that section.”

***Member’s explanatory statement***

*This amendment is to enable construction product regulations to make consequential amendments to the Clause relating to liability in respect of construction products.*

Page 242, line 31, leave out paragraph (c) and insert –

- “(c) where the offence is triable summarily only, any fine with which the offence is punishable in Scotland or Northern Ireland does not exceed level 5 on the standard scale,
- (ca) where the offence is triable summarily or on indictment, any fine with which the offence is punishable on summary conviction in Scotland or Northern Ireland does not exceed the statutory maximum, and”

***Member’s explanatory statement***

*This amendment makes a technical correction to secure that the maximum fine that can be imposed under the regulations for an offence in Scotland or Northern Ireland is the statutory maximum.*

Page 243, line 18, at end insert –

- “(aa) provision omitting a construction product from the list of safety-critical products under paragraph 10(1);”

***Member’s explanatory statement***

*This amendment makes regulations omitting a product from the list of safety-critical products subject to draft affirmative procedure.*

Page 243, line 21, at end insert –

- “(d) provision under paragraph 21(2) (consequential provision relating to liability for construction products).”

***Member’s explanatory statement***

*This amendment makes regulations that are made under the proposed power to make consequential provision subject to the draft affirmative procedure.*

Page 243, line 23, leave out “sub-paragraph (2) does” and insert “the requirements specified in sub-paragraph (2) do”

***Member’s explanatory statement***

*This amendment secures that a statutory instrument may contain both construction products regulations and regulations relating to cost contribution orders provided that the instrument is made subject to the draft affirmative procedure.*

## **Clause 151**

LORD GREENHALGH

Page 156, line 15, at end insert –

- “(4) Where –
  - (a) a relevant company is an accountable person for a higher-risk building (within the meaning of Part 4), and
  - (b) one or more (but not all) directors of the relevant company have been appointed for a building safety purpose and are entitled to remuneration from the company,



**Clause 151 - continued**

this section, so far as relating to Part 4, does not apply in relation to a director who is not entitled to remuneration from the relevant company.

(5) In subsection (4) –

“building safety purpose” means the purpose of supporting the relevant company in complying with its duties under Part 4 or under regulations made under that Part;

“relevant company” means –

- (a) a resident management company within the meaning of section (*Building safety directors of resident management companies*),
- (b) an RTM company within the meaning of Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (right to manage), or
- (c) a company that is a commonhold association within the meaning of Part 1 of that Act (see section 34).”

**Member’s explanatory statement**

*This amendment provides that, in relation to certain residents’ companies, this Clause - so far as relating to Part 4 - does not apply to unpaid directors if there are paid directors, appointed for a building safety purpose.*

**Clause 154**

LORD GREENHALGH

Page 157, line 28, at end insert –

“(da) sections (*New build home warranties*) and (*New build home warranties: financial penalties*) (new build home warranties);”

**Member’s explanatory statement**

*This amendment provides for the new Clauses on new build home warranties to bind the Crown.*

**Clause 158**

LORD GREENHALGH

Page 159, line 25, leave out “120(2)(c),”

**Member’s explanatory statement**

*This amendment is consequential on the removal of the power to make regulations under Clause 120(2)(c).*

Page 159, line 25, after “125” insert “, 128, 130, 131”

**Member’s explanatory statement**

*This amendment provides for regulations made under Clauses 128, 130 and 131 to be subject to the draft affirmative procedure.*

Page 159, line 27, after “paragraph” insert “3A(5),”

**Member's explanatory statement**

*This amendment provides that regulations under the power conferred by new paragraph 3A(5) of Schedule 9 are subject to the draft affirmative procedure.*

Page 159, line 34, at end insert –

“(ea) regulations under sections (*Costs contribution orders made by courts*) to (*Costs contribution orders: assessments*),”.

**Member's explanatory statement**

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

**Clause 159**

LORD GREENHALGH

Page 160, line 9, at end insert –

“(da) sections (*Costs contribution orders: general definitions*) to (*Costs contribution orders: assessments*) (*costs contribution orders*);”

**Member's explanatory statement**

*This amendment secures that the new Clauses relating to costs contribution orders extend to the whole of the United Kingdom.*

Page 160, line 16, at end insert –

- “(5) Sections (*Liability relating to construction products: general definitions*) to (*Liability for past defaults relating to cladding products*)(*liability relating to construction products*) extend to England and Wales and Scotland.
- (6) Section (*Liability relating to construction products: limitation in Scotland*) (*liability relating to construction products: limitation in Scotland*) extends to Scotland only.
- (7) The Secretary of State may by regulations –
- (a) provide for the provisions mentioned in subsection (5) to extend also to Northern Ireland, and
  - (b) make provision (including provision amending this Act or any other enactment) in relation to the application of the provisions mentioned in subsection (5) in Northern Ireland.”

**Member's explanatory statement**

*This amendment secures that the new clauses relating to civil liability in respect of construction products extend in the first place to England and Wales and Scotland, with power to extend them to Northern Ireland and to make provision as to their application in Northern Ireland.*

**Clause 160**

LORD GREENHALGH

Page 160, line 35, at end insert –

“(za) sections 119 to 127 and Schedule 9;”

***Member's explanatory statement***

*This amendment provides for the provisions on the remediation of certain defects to come into force two months after Royal Assent.*

Page 160, line 38, at end insert—

“(ca) sections (*Liability relating to construction products: general definitions*) to (*Costs contribution notices: assessments*);”

***Member's explanatory statement***

*This amendment provides for the new clauses relating to construction products to come into force two months after Royal Assent.*

**Clause 1**

LORD GREENHALGH

Page 1, line 17, leave out “as follows” and insert “including”

***Member's explanatory statement***

*This amendment is a drafting change.*

# Building Safety Bill

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AMENDMENTS  
TO BE MOVED  
ON REPORT

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*23 March 2022*

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