
Committee Stage: Thursday 22 July 2021

Building Safety Bill (Amendment Paper)

This document lists all amendments tabled to the Building Safety Bill. Any withdrawn amendments are listed at the end of the document. The amendments are arranged in the order in which it is expected they will be decided.

★ New Amendments.

New amendments: 1 to 5 and NC1 to NC7

Stephen McPartland
Royston Smith

1

★ Clause 124, page 130, line 17, at end insert—

“(2A) In respect of remediation works completed before the coming into force of this section, apply for any refund of VAT due under section 35(1A)(d) of the Value Added Tax Act 1994 and credit the whole amount of any such refund received pro-rata in accordance with the terms of the lease.”

Member’s explanatory statement

This amendment is consequential on NC1. Where works have already been carried out, this new subclause requires the landlord to obtain any retrospective VAT refund and to credit the whole amount of that VAT refund to leaseholders.

Stephen McPartland
Royston Smith

2

★ Clause 126, page 133, line 1, leave out “15 years” and insert “25 years”

Member’s explanatory statement

This amendment changes the period for claims under the Defective Premises Act 1972 and the Building Act 1984.

Stephen McPartland 3
Royston Smith

★ Clause 126, page 133, line 19, leave out subsection 5

Stephen McPartland 4
Royston Smith

★ Clause 126, page 133, leave out from the start of line 27 to the end of line 28

Member's explanatory statement

This amendment is consequential on Amendment 3.

Stephen McPartland 5
Royston Smith

★ Clause 126, page 133, line 29, leave out "90 days" and insert "1 year"

Member's explanatory statement

This amendment allows a period of up to 1 year, instead of 90 days, to obtain the necessary expert evidence required to issue viable claims under the Defective Premises Act 1972 and the Building Act 1984.

Stephen McPartland NC1
Royston Smith

★ To move the following Clause—

"Building Safety remediation and works: zero-rating for Value Added Tax purposes

- (1) The Value Added Tax Act 1994 is amended as follows.
- (2) After section 35(1A)(c) insert—
 - "(d) building safety remediation or building safety works of the type described in item 4 of the table in paragraph 1 of Group 5 of Schedule 8 to this Act."
- (3) After section 35(2) insert—
 - "(2A) For the purposes of subsection (2), the Commissioners shall make regulations providing for a period of not less than 6 months to be open for claims for repayment of VAT in relation to supplies under subsection 35(1A)(d) where the date of supply is between 14 June 2017 and 31 July 2022."
- (4) Schedule 8, part 2, group 5, after item 3 insert—
 - "(3A) The supply in the course of—

- (a) remediation of any defect in any external wall of any building containing two or more residential dwellings; or
 - (b) remediation of any defect in any attachment to any external wall of any building containing two or more dwellings; or
 - (c) the installation of a new or upgraded communal fire alarm system, other than to replace a communal system which has reached the end of its working life, or a communal system which has broken down as a result of failure to make reasonable repairs over time; or
 - (d) remediation of any internal or external defect other than a defect described in paragraphs (a), (b) or (c); or
 - (e) any building safety works carried out by an accountable person under section 84 of the Building Safety Act 2021 of any services related to the remediation"
- (5) Schedule 8, part 2, group 5, item 4, for "item 2 or 3" substitute "item 2, 3 or 3A".
- (6) Schedule 8, part 2, group 5, after note 24 insert—
- "(25) For the purposes of item 4 in the table above—

"defect" means anything posing any risk to the spread of fire, the structural integrity of the building or the ability of people to evacuate the building, including but not limited to any risk identified in guidance issued under Article 50 of the Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541) or any risk identified in regulations made under section 59 of the Building Safety Act 2021;

"external wall" has the same meaning as in Article 6 of the Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541);

"remediation" means any step taken to eradicate or to mitigate a defect, including employment of any person temporarily or permanently to assist in evacuation of any part of a building, and whether or not the defect in question existed at the date any dwelling in the building was first occupied. Remediation does not include anything required in consequence of omitting to effect reasonable repairs or maintenance to all or any part of the building over time, or anything which is the responsibility of the occupant of a dwelling in the building." "

- (7) This section comes into force on 1 August 2022."

Member's explanatory statement

This new clause allows recovery of VAT on building safety remedial works paid since 14 June 2017 and makes future supplies of materials, goods and services for building safety remediation projects zero-rated for Value Added Tax.

Stephen McPartland
Royston Smith

NC2

★ To move the following Clause—

“Fire safety defects and defective dwellings

- (1) The Housing Act 1985 is amended as follows.
- (2) In section 521(1)(a) omit the final “, and” and replace it with “, or”.
- (3) After section 528(1)(a) insert—
 - “(za) buildings in the proposed class are defective as a result of their external walls or any attachment to the external walls, whether as a result of the design or construction of the external walls or the attachment in question; or
 - (zb) buildings in the proposed class are defective as a result of anything which in the opinion of the Secretary of State poses a building safety risk or the ability of anyone to evacuate the building, whether or not the building is a higher-risk building, and”
- (4) In section 528(1)(b) for “paragraph (a)” substitute “paragraphs (a), (za) or (zb)”.
- (5) In section 528(1)(b) at the end insert “, or in the opinion of the Secretary of State is materially difficult to mortgage, insure or sell compared to non-defective dwellings.”
- (6) After section 528(4) insert—
 - “(4A) A designation may identify any part of a building or class of buildings, any design feature, any material used in the construction of that building, any error in workmanship or installation or anything missing from that building, whether or not it should have been included when the building was constructed.
 - (4B) A designation may be made if the defect requires the employment of any person, whether on a permanent or temporary basis, specifically to assist with the evacuation of that building or part of that building.”
- (7) After section 528(6) insert—
 - “(7) In this section—

“building safety risk” has the same meaning as in section 59 of the Building Safety Act 2021.

“external wall” has the same meaning as in Article 6 of the Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541).

- (8) In section 559(1)(a) omit the final “, and” and replace it with “, or”.
- (9) After section 559(1)(a) insert—
 - “(za) buildings in the proposed class are defective as a result of their external walls or any attachment to the external walls, whether as a result of the design or construction of the external walls or the attachment in question; or

- (zb) buildings in the proposed class are defective as a result of anything which in the opinion of the local housing authority poses a building safety risk or the ability of anyone to evacuate the building, whether or not the building is a higher-risk building, and"
- (10) (In section 559(1)(b) for "paragraph (a)" substitute "paragraphs (a), (za) or (zb)".
- (11) In section 559(1)(b) at the end insert ", or in the opinion of the local housing authority materially difficult to mortgage, insure or sell compared to non-defective dwellings."
- (12) After section 559(4) insert—
- "(4A) A designation may identify any part of a building or class of buildings, any design feature, any material used in the construction of that building, any error in workmanship or installation or anything missing from that building, whether or not it should have been included when the building was constructed.
- (4B) A designation may be made if the defect requires the employment of any person, whether on a permanent or temporary basis, specifically to assist with the evacuation of that building or part of that building."
- (13) After section 559(6) insert—
- "(7) In this section—
- "building safety risk" has the same meaning as in section 59 of the Building Safety Act 2021;
- "external wall" has the same meaning as in Article 6 of the Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541);
- "higher-risk building" has the same meaning as in section 62 of the Building Safety Act 2021."
- (14) This section comes into force on the day this Act is passed. "

Member's explanatory statement

This new clause amends Part XVI of the Housing Act 1985 (originally enacted as the Housing Defects Act 1984) to empower the government and local authorities to designate dwellings with cladding and fire safety defects as defective and to provide grant support for remediation funded by levies on developers, insurers, etc.

Stephen McPartland
Royston Smith

NC3

★ To move the following Clause—

"Duty on the Secretary of State to report on designations under Part XVI of the Housing Act 1985

- (1) Within the period of six months beginning with the day on which this section comes into force, the Secretary of State must—

- (a) consider the financial impact on leaseholders in England and Wales of building safety advice given by his department since 14 June 2017; and
 - (b) in conjunction with the Treasury and the Prudential Regulation Authority, consider the impact of building safety advice given by his department since 14 June 2017 on the supply of mortgage finance for leasehold flats in England and Wales; and
 - (c) publish a report setting out his determination, in light of the factors identified in paragraphs (a) and (b), as to whether designations under section 528 or section 559 of the Housing Act 1985 would improve conditions for leaseholders, or would improve the supply of mortgage finance for leasehold flats in England and Wales.
- (2) If the Secretary of State's report under subsection (1) concludes that designations under section 528 or section 559 of the Housing Act 1985 would improve financial conditions for leaseholders in England and Wales, or would improve the supply of mortgage finance for leasehold flats in England and Wales, then at the same time as publishing his report he must—
 - (a) make arrangements to provide all necessary funding;
 - (b) make the appropriate designations under section 528 of the Housing Act 1985; and
 - (c) advise local housing authorities to make appropriate designations under section 559 of the Housing Act 1985.
- (3) Before making any regulations bringing into force any section in Part 4 of this Act, the Secretary of State must make arrangements for—
 - (a) a motion to the effect that the House of Commons has approved the report prepared under subsection (1), to be moved in the House of Commons by a minister of the Crown; and
 - (b) a motion to the effect that the House of Lords to take note of the report prepared under subsection (1), to be moved in the House of Lords by a minister of the Crown.
- (4) The motions required under subsections (3)(a) and (3)(b) must be moved in the relevant House by a Minister of the Crown within the period of five calendar days beginning with the end of the day on which the report under subsection (1) is published.
- (5) If the motion tabled in the House of Commons is rejected or amended, the Secretary of State must, within 30 calendar days, publish a further report under subsection (1) and make arrangements for further approval equivalent to those under subsection (2).
- (6) The Secretary of State shall make a further report under subsection (1) at least every 90 calendar days beginning with the day of any rejection or amendment by the House of Commons under subsection (5) until otherwise indicated by a resolution of the House of Commons.
- (7) In this section—

“leaseholder” means the registered legal owner of a long lease; and

“long lease” has the same meaning as in section 76 of the Commonhold and Leasehold Reform Act 2002.

- (8) This section comes into force on the day this Act is passed.”

Member’s explanatory statement

This new clause places a time-limited duty on the Secretary of State to consider making designations under Part XVI of the Housing Act 1985 to provide funding for cladding and fire safety remediation and for Parliament to approve the plans for doing so.

Stephen McPartland
Royston Smith

NC4

★ To move the following Clause—

“Building Safety Indemnity Scheme

- (1) There shall be a body called the “Building Safety Indemnity Scheme” (referred to in this Act as “the Scheme”).
- (2) The purpose of the Scheme shall be to collect money from levies and to disburse the money raised from those levies in the form of grants to leaseholders to pay all or any part of the following types of costs—
 - (a) remediation of any defect in any external wall of any building containing two or more residential units; or
 - (b) remediation of any defect in any attachment to any external wall of any building containing two or more residential units; or
 - (c) remediation of any internal or external defect other than a defect described in paragraphs (a) or (b); or
 - (d) any building safety works carried out by an accountable person under section 84; or
 - (e) any other cost of a type specified by the Secretary of State in regulations made under this section.
- (3) The Scheme may disburse money for the benefit of leaseholders in any type of building, whether or not a higher-risk building and whether or not the building was completed before the coming into force of this Act.
- (4) The levy imposed by the Scheme shall be determined by reference to each of the following—
 - (a) the Scheme’s best estimate of the reasonably likely total cost grants to cover any type of cost described in subsection (2);
 - (b) the Scheme’s best estimate of the costs of raising and administering the levy; and
 - (c) the Scheme’s best estimate of the costs of processing applications for grants to leaseholders and disbursing funds to leaseholders from monies raised by the levy.
- (5) Members of the Scheme subject to levies shall include the following—
 - (a) any person seeking building control approval from the Regulator;
 - (b) any prescribed insurer providing buildings insurance to buildings containing two or more residential units, whether or not the buildings are higher-risk buildings;

- (c) any prescribed lender providing mortgage finance in the United Kingdom, whether or not secured over residential units in higher-risk buildings; and
 - (d) any other person whom the Secretary of State considers appropriate.
- (6) The Scheme is to consult with levy paying members before determining the amount and duration of any levy.
- (7) The Scheme must provide a process by which leaseholders, or persons acting on behalf of leaseholders, can apply for grants for the types of costs specified in subsection (2).
- (8) The Scheme must provide an appeals process for the Scheme's decisions regarding—
 - (a) the determination of the amount of any levy; or
 - (b) the determination of any grant application.
- (9) A building control authority may not give building control approval under the Building Act 1984 to anyone unless—
 - (a) the person seeking building control approval is a registered member of the Scheme, or that person becomes a registered member of the Scheme; and
 - (b) the person seeking building control approval pays all levies made on that person by the Scheme under subsection (3).
- (10) Any liability to pay a levy under this section does not affect the liability of the same person to pay an additional levy under section 57 of this Act.
- (11) Within a period of 12 months beginning with the coming into force of this section, the Secretary of State must make regulations providing for—
 - (a) the appointment of a board to oversee the Scheme;
 - (b) the staffing of the Scheme;
 - (c) the creation and maintenance of a register of members of the Scheme;
 - (d) the preparation of the best estimates described in subsection (3);
 - (e) the amount, manner and timing of payment of the levies on members of the Scheme under this section;
 - (f) the process of joining the Scheme;
 - (g) the process of leaseholders applying to the Scheme for grants towards any of the types of costs specified in subsection (2);
 - (h) the process for handling any appeals against decisions of the Scheme on any levy or any grant;
 - (i) the Scheme to make an annual report to Parliament; and
 - (j) any other matters consequential to the Scheme's operation.
- (12) Regulations made under this section are to be made by statutory instrument.
- (13) A statutory instrument under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(14) In this section—

“building” has the same meaning as in section 29;

“building control approval” has the same meaning as in paragraph (1B)(2) of Schedule 1 to the Building Act 1984;

“building control authority” has the same meaning as in section 121A of the Building Act 1984;

“defect” means anything posing any risk to the spread of fire, the structural integrity of the building or the ability of people to evacuate the building, including but not limited to any risk identified in guidance issued under Article 50 of the Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541) or any risk identified in regulations made under section 59;

“external wall” has the same meaning as in Article 6 of the Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541);

“higher-risk building” has the same meaning as in section 59;

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

“remediation” means any step taken to eradicate or to mitigate a defect, including employment of any person to temporarily assist in evacuation of any part of a building, and whether or not the defect in question existed at the date any residential unit in the building was first occupied. Remediation does not include anything required in consequence of omitting to effect reasonable repairs or maintenance to all or any part of the building over time, or anything which is the responsibility of an occupant of a residential unit within the building;

“residential unit” has the same meaning as in section 123.

(15) This section shall come into force on the day this Act is passed.”

Member’s explanatory statement

This new clause would require the government to establish a comprehensive fund, equivalent to the Motor Insurers’ Bureau, to provide grants to remediate cladding and fire safety defects of all descriptions, paid for by levies on developers, building insurers and mortgage lenders.

Stephen McPartland
Royston Smith

NC5

★ To move the following Clause—

“Implied terms in residential building and residential renovation contracts

- (1) Every residential building contract is to be taken to contain terms that—
- (a) the residential unit is fit for the purpose of ordinary residential occupation and is likely to remain so for a reasonable period if kept in appropriate repair;

- (b) the residential unit in question is constructed in all material respects as described or stated on the approved plans;
 - (c) the residential unit is not subject to any building safety risk;
 - (d) the materials incorporated in the residential unit are as described in any approved plans;
 - (e) the materials incorporated in the residential unit are of satisfactory quality;
 - (f) the design of the residential unit is of a reasonable standard;
 - (g) the design of the residential unit is prepared with reasonable care and skill;
 - (h) all works in connection with the construction of the residential unit are executed with reasonable care and skill; and
 - (i) the residential unit complies in all material respects with all applicable statutory requirements and with all applicable building regulations in force as at the date of completion.
- (2) Every residential renovation contract is to be taken to contain terms that any renovation works—
- (a) do not render the unit unfit for the purpose of ordinary residential occupation;
 - (b) do not create any building safety risk;
 - (c) do not involve the incorporation of materials in the residential unit which are not as described in any approved plans;
 - (d) do not involve the incorporation of materials in the residential unit which are not of satisfactory quality;
 - (e) are executed with reasonable care and skill; and
 - (f) do not render the residential unit materially non-compliant with any applicable statutory requirement or with any applicable requirement of building regulations in force as at the date of completion.
- (3) For the purposes of subsections (1) and (2), where the residential unit forms part of a building consisting of two or more residential units, the internal and external common parts of that building necessary for the reasonable occupation of any of the residential units are also to be taken to be subject to the same terms.
- (4) A residential unit is fit for the ordinary purpose of residential occupation if it would be regarded as such by a reasonable person and taking into account—
- (a) the ordinary costs of repair and maintenance of that residential unit by reference to that unit's location and specific characteristics;
 - (b) any marketing materials provided before the sale of the residential unit in question; and
 - (c) whether that unit was marketed, designed or intended to be occupied by any particular class of persons, whether by age, by gender or by physical or mental disability.
- (5) For the purposes of this section—
- (a) a matter is material if it would be considered material if known or discovered by a reasonable purchaser of that residential unit

- before completing a purchase of that residential unit on ordinary commercial terms;
- (b) a design is of a reasonable standard if a designer of average competence would have produced the same or a similar design;
 - (c) a material is of satisfactory quality if it would meet the requirements for satisfactory quality of goods under section 9 of the Consumer Rights Act 2015; and
 - (d) a material is as described if it would meet the requirements for description of goods under section 11 of the Consumer Rights Act 2015.
- (6) The terms taken to be included in any residential building contract or residential renovation contract are enforceable by any owner of the residential unit provided or renovated under the contract in question.
 - (7) A term of a residential building contract or a residential renovation contract is not binding on the owner of a residential unit provided or renovated pursuant to that contract if it would exclude or restrict any liability in relation to the terms implied by this section.
 - (8) The reference in subsection (7) to excluding or restricting a liability also includes preventing an obligation or duty arising or limiting its extent.
 - (9) An agreement in writing to submit present or future differences to arbitration is not to be regarded as excluding or restricting any liability for the purposes of this section.
 - (10) In this section—

“approved plans” means any document submitted as part of obtaining building control approval;

“building control approval” has the same meaning as in paragraph (1B) of Schedule 1 to the Building Act 1984;

“building safety risk” has the same meaning as in section 59, whether or not the residential unit is in a higher-risk building;

“higher-risk building” has the same meaning as in section 62;

“owner” means the registered legal owner of the residential unit from time to time, including any trustee holding a beneficial interest on behalf of a third party and any transferee or assignee of the original owner;

“residential unit” has the same meaning as in section 123;

“residential building contract” means a contract made in the course of business involving work on or in connection with the construction of a residential unit (whether the dwelling is provided by the erection or by the conversion or enlargement of an existing building);

“residential renovation contract” means a contract made in the course of business involving work on an existing residential unit, except where it is expected that, on completion of the work, it will have ceased to be a residential unit or will otherwise have ceased to exist.””

Member's explanatory statement

This new clause strengthens consumer rights for future buyers by requiring houses and flats to be built, and renovated, to reasonable standards of quality in a way which is compliant in all material respects with the law and with building regulations.

Stephen McPartland
Royston Smith

NC6

★ To move the following Clause—

"Implied terms: limitation

- (1) The Limitation Act 1980 is amended as follows.
- (2) After section 5 insert—

"5A Time limit for actions related to breach of implied terms in residential building contracts and residential renovation contracts

An action in respect of the breach of the term implied into a residential building contract or a residential renovation contract by section (Implied terms in residential building and residential renovation contracts) of the Building Safety Act 2021 may not be brought after the expiration of 25 years from the date on which the cause of action accrued." "

Member's explanatory statement

This new clause provides for a 25 year limitation period for failure to comply with NC5.

Stephen McPartland
Royston Smith

NC7

★ To move the following Clause—

"Implied terms: mandatory insurance

- (1) No residential unit is to be marketed for sale or sold unless—
 - (a) every potential purchaser is provided on request with an accurate written summary of the terms of a prescribed policy applying to the residential unit when completed; and
 - (b) the seller of the residential unit arranges a valid prescribed policy and provides a copy of a valid prescribed policy given to the purchaser of the residential unit on the day of the transfer of title in the residential unit.
- (2) Any person in the course of business providing a residential unit under a residential building contract or renovations to a residential unit under a residential renovation contract must obtain a valid prescribed policy.
- (3) No term of any residential building contract or residential renovation contract is enforceable unless a valid prescribed policy is in force in respect of such a contract.
- (4) Within a period of six months beginning on the day this section comes into force, the Secretary of State must make regulations prescribing insurance terms for the purposes for this section, including—

- (a) the creditworthiness of any insurer or warranty scheme under this section;
 - (b) the name of any warranty scheme which in the opinion of the Secretary of State achieves the purposes of this section;
 - (c) the minimum terms of any insurance or warranty;
 - (d) a policy term or a warranty term of not less than the limitation period for making claims under any term implied into a residential building contract or residential renovation contract by this Act; and
 - (e) to bring into force section [Implied terms in residential building and residential renovation contracts] and section [Implied terms: limitation].
- (5) Regulations made under this section are to be made by statutory instrument.
- (6) A statutory instrument under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (7) In this section—

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

“residential building contract” has the same meaning as in section [Implied terms in residential building and residential renovation contracts];

“residential renovation contract” has the same meaning as in section [Implied terms in residential building and residential renovation contracts]; and

“residential unit” has the same meaning as in section 123.

- (8) This section shall come into force on the day this Act is passed.”

Order of the House

[21 July 2021]

That the following provisions shall apply to the Building Safety Bill:

Committal

1. The Bill shall be committed to a Public Bill Committee.

Proceedings in Public Bill Committee

2. Proceedings in the Public Bill Committee shall (so far as not previously concluded) be brought to a conclusion on Tuesday 26 October 2021.
3. The Public Bill Committee shall have leave to sit twice on the first day on which it meets.

Proceedings on Consideration and Third Reading

4. Proceedings on Consideration shall (so far as not previously concluded) be brought to a conclusion one hour before the moment of interruption on the day on which proceedings on Consideration are commenced.
5. Proceedings on Third Reading shall (so far as not previously concluded) be brought to a conclusion at the moment of interruption on that day.
6. Standing Order No. 83B (Programming committees) shall not apply to proceedings on Consideration and Third Reading.

Other proceedings

7. Any other proceedings on the Bill may be programmed.
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