

BUILDING SAFETY BILL

EXPLANATORY NOTES ON LORDS

AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Building Safety Bill as brought from the House of Lords on 5 April 2022.
- 2 These Explanatory Notes have been prepared by the Department for Levelling Up, Housing and Communities in order to assist the reader of the Bill and the Commons amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to Bill Number 98, the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 Aside from Lords Amendment 6, tabled by Lord Stunell and Baroness Pinnock which was opposed by the Government amendments 1 to 191 were tabled in the name of Lord Greenhalgh, Building Safety Minister
- 6 Lord Young of Cookham, Lord Blencathra supported by the Earl of Lytton tabled two amendments to Lords amendment 94, which were opposed by the Government. Baroness Hayman of Ullock tabled two Lords amendments to Lords amendment 184. Her amendment at Report was opposed by the Government. Her subsequent amendment to 184 at third reading was not opposed.
- 7 Lord Best tabled Lords Amendment 64 which was supported by the Government.
- 8 In the following Commentary, an asterisk(*) appears in the heading of any paragraph that deals with a non-Government amendment.

Commentary on Lords amendments

Lords Amendment to Clause 1: Overview of Act

Lords Amendment 1

- 1 Lords amendment 1 is a drafting change.

Lords Amendments to Clause 4: Duty to facilitate building safety: higher risk buildings

Lords Amendment 2

- 2 Lords Amendment 2 inserts a new subsection (1A) in Clause 4. Its effect is to clarify that the Building Safety Regulator's role in facilitating securing the safety of persons in higher-risk buildings under clause 4 includes, in particular, facilitating securing the safety of disabled people in such buildings.

Lords Amendment 3

- 3 Lords Amendment 3 is an amendment consequential on amendment 38.

Lords Amendments 4 and 5

- 4 Lords Amendments 4 and 5 are amendments consequential on amendment 2.

Lords Amendment to Clause 5: Duty to keep safety and standard of buildings under review

* Lords Amendment 6

- 5 Lords Amendment 6 requires the Building Safety Regulator, within two years of Clause 5 coming into force, to assess and report on the benefits and costs of measures to improve the safety of people in or about buildings in the following areas:
 - a. fire suppression systems;
 - b. stairways and ramps;
 - c. certification of electrical equipment and systems; and
 - d. provision for people with disabilities.

Lords Amendment to Clause 11: Residents' Panel

Lords Amendment 7

- 6 Lords amendment 7 to Clause 11 introduces a requirement that the Building

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Safety Regulator must take all reasonable steps to secure the representation of the interests of disabled people on its Residents' Panel. This could be by ensuring the committee includes one or more residents of higher-risk buildings who are disabled, a body that represents, supports or promotes the interests of disabled people including residents of higher-risk buildings, or individual members of such representative bodies (expected to be experts or representatives nominated by that body).

Lords Amendments to Clause 12: Committees: power to amend or repeal

Lords Amendment 8

7 Lords amendment 8 introduces an additional safeguard before the delegated power under clause 12 of the Bill can be used to repeal any of the Building Safety Regulator's statutory committees by regulations. Such regulations can only be brought forward following a proposal by the Building Safety Regulator to Secretary of State to repeal the Committee provisions.

Lords Amendment 9

8 Lords amendment 9 is consequential on amendment 8.

Lords Amendment to Clause 20: Statement of regulator's engagement with residents etc.

Lords Amendment 10

9 Lords amendment 10 requires the Building Safety Regulator's public reporting on its engagement with residents of higher-risk buildings to include, in particular, details of its engagement with disabled residents.

Lords Amendment to Clause 29: Interpretation of the Act

Lords Amendment 11

10 Lords amendment 11 inserts a definition of disabled which is consistent with the Equality Act 2010.

Lords Amendments to Clause 41: Regulation of the Building Control Profession

Lords Amendments 12 and 13

- 11 Lords amendments 12 and 13 are amendments consequential on amendment 18. They provide that new section 58Z7A of the Building Act 1984 applies to a person to whom the regulator has delegated registration functions under new Part 2A of that Act as it applies to the regulator.

Lords Amendment 14

- 12 Lords amendment 14 is a drafting change.

Lords Amendment 15

- 13 Lords amendment 15 is consequential on Lords amendment 18. It provides that new section 58Z7A of the Building Act 1984 applies to a person to whom the Welsh Ministers have delegated registration functions under new Part 2A of that Act as it applies to the Welsh Ministers.

Lords Amendment 16

- 14 Lords Amendment 16, which is consequential on Lords Amendment 31, enables a person to whom the Welsh Ministers have delegated registration functions (under new Part 2A of the Building Act 1984) to apply to the High Court under new section 131A(5) for a declaration that an act or omission of the Crown is unlawful.

Lords Amendment 17

- 15 Lords Amendment 17 amends clause 41 which inserts a new Part 2A “Regulation of Building Control Profession” in the Building Act 1984. The amendment adds a new section into Part 2A that ensures that the regulatory authority can carry out an inspection of a local authority, or a registered building control approver, in relation to their exercise of building control functions for specific purposes.

Lords Amendment 18

- 16 Lords Amendment 18 amends clause 41 which inserts a new Part 2A “Regulation of Building Control Profession” in the Building Act 1984. The amendment adds a new section into Part 2A to enable the reciprocal sharing of information between the regulatory authorities for the building control professions in England and Wales in accordance with data protection legislation.

Lords Amendment to Clause 47: Insurance

Lords Amendment 19

17 Lords Amendment 19 removes clause 47 from the Building Safety Bill, which had allowed the appropriate national authority or a body designated by the appropriate national authority to approve insurance schemes and publish guidance as to the adequacy of insurance schemes for registered building control approvers.

Lords Amendment after Clause 47: Insurance: removal of requirements

Lords Amendment 20

18 Lords Amendment 20 removes the requirement in the Building Act 1984 for Approved Inspectors to hold insurance through a Government-approved scheme.

Lords Amendment to Clause 52: Information

Lords Amendment 21

19 Lords Amendment 21 is a drafting change.

Lords Amendments to Clause 57: Levy on applications for building control approval

Lords Amendments 22-24, 26-28 and 30

20 Lords Amendments 22-24, 26-28 and 30 extend the power to impose a levy to work other than higher-risk building work, if it relates to residential or mixed-use buildings and to initial notices, amendment notices and public body's notices (as well as applications for building control approval).

Lords Amendment 25

21 Lords Amendment 25 enables regulations to specify differential charging between members of any Building Industry Scheme and those who are eligible for the Scheme but are not members.

Lords Amendment 29

22 Lords Amendment 29 defines "building industry scheme".

Lords Amendments after Clause 57

Lords Amendment 31 – Crown application

23 Lords Amendment 31 introduces a new clause that makes provision about the application of Parts 1 (with certain exceptions), 2 and to 2A of the Building Act 1984 to the Crown. It also makes provision about the application of Part 4 of that Act so far as relating to provisions which bind the Crown.

Lords Amendment 32 – application to Parliament

24 Lords Amendment 32 introduces a new clause that makes provision about the application of the Building Act 1984 to Parliament.

Lords Amendments to Clause 58: Overview of Part

Lords Amendment 33

25 Lords Amendment 33 is consequential on the amendments removing Clauses 80 to 84 (which remove provision about building safety managers).

Lords Amendment 34

26 Lords Amendment 34 is consequential on Lords Amendment 183 to leave out Schedule 8.

Lords Amendment to Clause 77: Applications for building assessment certificates

Lords Amendment 35

27 Lords Amendment 35 is consequential on the amendments removing Clauses 80 to 84 (provision about building safety managers).

Lords Amendment to Clause 78: Building assessment certificates

Lords Amendment 36

28 Lords Amendment 36 is consequential on the amendments removing Clauses 80 to 84 (provision about building safety managers).

Lords Amendment to Clause 79: Duty to display building assessment certificate etc.

Lords Amendment 37

29 Lords Amendment 37 is consequential on the amendments removing Clauses 80 to 84 (provision

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about building safety managers).

Lords Amendment to Clause 80: Duty to appoint a building safety manager

Lords Amendment 38

30 Lords Amendment 38 removes the duty on the Principal Accountable Person to appoint a building safety manager. The effect of this amendment is that there is no longer a legal requirement to appoint a building safety manager for an occupied higher-risk building.

Lords Amendment to Clause 81: Appointment of building safety manager where multiple Accountable Persons

Lords Amendment 39

31 Lords Amendment 39 is consequential on Lords Amendment 38 and removes the clause relating to the appointment of building safety managers in buildings with two or more Accountable Persons.

Lords Amendment to Clause 82: Terms of appointment of building safety manager

Lords Amendment 40

32 Lords Amendment 40 is consequential on Lords Amendment 38 and removes the clause relating to the terms of appointment of building safety managers.

Lords Amendment to Clause 83: Exception from duty to appoint building safety manager

Lords Amendment 41

33 Lords Amendment 41 is consequential on amendment 38 and removes the exception from the duty to appoint a building safety manager.

Lords Amendment to Clause 84: Section 83: further provision where multiple Accountable Persons

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Lords Amendment 42

34 Lords Amendment 42 is consequential on Lords Amendment 38 and removes the clause relating to the exception to the duty to appoint a building safety manager in buildings with two or more Accountable Persons.

Lords Amendments to Clause 93: Residents' engagement strategy

Lords Amendments 43, 44, 45, 46, 47, 48 and 49

35 Lords Amendments 43, 44, 45, 46, 47, 48 and 49 make it clear that the Principal Accountable Person is required to consult residents and relevant persons on the Residents' Engagement Strategy in prescribed circumstances and act in accordance with the strategy (Lords Amendment 44).

36 The Principal Accountable Person must review the Residents' Engagement Strategy at prescribed times (Lords Amendment 43) and a copy of the Residents' Engagement Strategy must be provided to prescribed persons (Lords Amendment 47) as well as to residents and owners of relevant residential units. The prescribed times and prescribed persons will be set out in regulations.

37 The amendment allows regulations to make provision about consultations on a Residents' Engagement Strategy (Lords Amendment 49) and about the preparation, review or revision of a strategy where there is more than one Accountable Person for the higher-risk building (Lords Amendment 48). Lords Amendments 45 and 46 are drafting changes to ensure alignment with the amendments described above.

Lords Amendment to Clause 110: Guidance

Lords Amendment 50

38 Lords Amendment 50 is consequential on the amendments removing Clauses 80 to 84 (provision about building safety managers).

Lords Amendment to Clause 112: Managers appointed under Part 2 of the Landlord and Tenant Act 1987

Lords Amendment 51

39 Lords Amendment 51 is a drafting change.

Lords Amendment After Clause 112: Building safety directors of resident management companies

Lords Amendment 52

40 Lords Amendment 52 inserts a new clause which provides that the articles of association of a resident management company which is an Accountable Person 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.

41 The purpose of this new clause is to enable resident management companies that are Accountable Persons to appoint a professional director to support them with their Part 4 building safety duties.

42 Resident management company will be defined in regulations made by the Secretary of State.

43 It is intended that the definition will not encompass Right to Manage companies within the meaning of the Commonhold and Leasehold Reform Act 2002 as section 74 of that Act contains a power enabling the Secretary of State to prescribe articles of association for such companies.

Lords Amendments to Clause 113: Implied terms in leases and recovery of safety related costs

Lords Amendment 53

44 Lords Amendment 53 is consequential on other amendments to this Clause.

Lords Amendment 54

45 Lords Amendment 54 is a drafting change.

Lords Amendments 55, 56 and 73

46 Lords Amendments 55, 56 and 73 are consequential on the amendments removing the provision in Clauses 80 to 84 about building safety managers.

Lords Amendment 57

47 Lords Amendment 57 is consequential on Lords Amendment 59 which removes the building safety charge as a separate charge.

Lords Amendment 58

48 Lords Amendment 58 is a drafting change.

Lords Amendment 59

49 Lords Amendment 59 removes the building safety charge as a separate charge.

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Lords Amendment 60

50 Lords Amendment 60 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 measures.

Lords Amendment 61

51 Lords Amendment 61 is consequential on Lords Amendment 59 which removes the building safety charge as a separate charge.

Lords Amendment 62

52 Lords Amendment 62 which creates a definition of “relevant person”, is consequential on other amendments to this Clause.

Lords Amendment 63

53 Lords Amendment 63 confers a power to amend the definition of “building safety measure”.

Lords Amendment 64

54 Lords Amendment 64 inserts new section 30DA in the Landlord and Tenant Act 1987. It implies terms into relevant leases with the effect that costs incurred by a residents’ management company or RTM company in remunerating a director appointed for the purpose of supporting them with their Part 4 duties can be recoverable as a service charge under the lease. A non-Government amendment was accepted at Lords Report to ensure that there is no barrier in leases to such an appointment taking place.

Lords Amendment 65

55 Lords Amendment 65 is consequential on Lords Amendment 64.

Lords Amendments 66, 67 and 70 to 72

56 Lords Amendments 66, 67, and 70-72 are consequential on Lords Amendment 74 which makes provision on costs incurred in respect of building safety measures.

Lords Amendments 68 and 69

57 Lords Amendments 68 and 69 are consequential on Lords Amendments 64 and 74.

Lords Amendment 74

58 Lords Amendment 74 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.

Lords Amendment 75

59 Lords Amendment 75 is consequential on other amendments which remove the building safety charge as a separate charge and on Lords Amendment 64 (liability for remuneration of building safety director of resident management company etc.).

[Lords Amendments 76 and 77](#)

60 Lords Amendments 76 and 77 are consequential on Lords Amendment 59 which removes the building safety charge as a separate charge.

Lords Amendments to Clause 114: Provision of building safety information

[Lords Amendments 78 79, 82 to 84, 87 and 89](#)

61 Lords Amendments 78, 79, 82 to 84, 87 and 89 are consequential on Lords Amendment 59 which removes the building safety charge as a separate charge.

[Lords Amendment 80](#)

62 Lords Amendment 80 provides that the prohibition on recovery of certain charges for failure to provide the building safety information in a demand does not apply if a special measures order is in force.

[Lords Amendment 81](#)

63 Lords Amendment 81 is drafting change.

[Lords Amendment 85](#)

64 Lords Amendment 85 provides that the prohibition on recovery of rent or certain other charges for failure to provide the building safety information in a notice does not apply if a special measures order is in force.

[Lords Amendments 86, 88 and 90](#)

65 Lords Amendments 86, 88 and 90 are consequential on the amendments removing Clauses 80 to 84 (provision about building safety managers).

Lords Amendments to Clause 116: Interpretation of Part 4

[Lords Amendment 91](#)

66 Lords Amendment 91 is consequential on the amendments removing Clauses 80 to 84 (provision about building safety managers).

[Lords Amendment 92](#)

67 Lords Amendment 92 removes the provision providing that Part 4 does not apply in relation to the Palace of Westminster.

Lords Amendments before Clause 117

“Remediation of certain defects

Lords Amendment 93

68 Lords Amendment 93 introduces provisions about the remediation of relevant defects in relevant buildings.

“Meaning of “relevant building”

*Lords Amendment 94

69 Lords Amendment 94 inserts a new clause that defines “relevant building” as a self-contained building (or self-contained part of a building) in England containing at least two dwellings.

“Section (*Meaning of “relevant building”*): height of buildings and number of storeys

Lords Amendment 95

70 Lords Amendment 95 inserts a new clause which provides detail about how to determine the height and number of storeys of a relevant building.

“Meaning of “qualifying lease” and “the qualifying time

Lords Amendment 96

71 Lords Amendment 96 inserts a new clause which defines a “qualifying lease”. A lease is qualifying if, on 14 February 2022 (the “qualifying time”) it was the leaseholder’s principal home, or if the leaseholder owned no more than three properties in the UK in total. Qualifying lease status will transfer to the new owner of a home upon sale.

“Meaning of “relevant defect”

Lords Amendment 97

72 Lords Amendment 97 inserts a new clause which defines a “relevant defect” as arising as a result of anything done (or not done), or anything used (or not used), in connection with relevant works to a building, that causes a building safety risk. A building safety risk is defined as a risk to the

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safety of people in or about the building arising from the spread of fire, or the collapse of the building or any part of it. Relevant works are those that were completed in the 30-year period prior to commencement of the provision.

“Associated persons

Lords Amendment 98

73 Lords Amendment 98 inserts a new clause which defines when bodies corporate are associated for the purposes of the leaseholder protections measures. A body corporate X is associated with a body corporate Y if one controls the other or if both are controlled by a third body corporate. The clause also details when a partnership is associated with a person who was a partner in the partnership.

“Remediation costs under qualifying leases

Lords Amendment 99

74 Lords Amendment 99 inserts a new clause which inserts the Schedule (Remediation costs under qualifying leases) which provides that certain service charge amounts relating to relevant defects in a relevant building are not payable and makes provision for the recovery of those amounts from landlords under leases of a building.

“Remediation orders

Lords Amendment 100

75 Lords Amendment 100 inserts a new clause which allows the First-tier Tribunal, on the application of an interested person, to require a relevant landlord to remedy specified relevant defects in a specified relevant building by a specified time.

“Remediation contribution order

Lords Amendment 101

76 Lords Amendment 101 inserts a new clause that enables the First-tier Tribunal, on the application of an interested person, to make a remediation contribution order in relation to a relevant building, to require a specified body corporate or partnership to make payments to a specified person to meet costs incurred or to be incurred in remedying relevant defects, relating to the relevant building.

“Meeting remediation costs of insolvent landlord

Lords Amendment 102

77 Lords Amendment 102 inserts a new clause set that enables the court, on the application of an insolvency practitioner, to require a body corporate or partnership associated with a relevant landlord to make remediation contributions if, in the course of winding up the landlord, it appears that the landlord has liabilities in relation to the remediation of relevant defects.

“Building Industry schemes

Lords Amendment 103

78 Lords Amendment 103 inserts a new clause that gives the Secretary of State a power to establish through affirmative regulations a scheme or schemes for the building industry. A scheme may be established for any purpose connected with securing the safety of persons in or about buildings in relation to risks arising from buildings, or improving the standard of buildings, including by securing that persons in the building industry remedy defects in buildings or contribute to costs associated with remedying defects in buildings. Regulations under this clause may prescribe eligibility for a scheme, the conditions eligible persons must meet to become and remain members of a scheme and may provide for different categories of membership. The measures set out in Clause 57 and Lords Amendments 105 and 106 may be applied to persons who are eligible for a scheme but who are not members.

“Building industry schemes: supplementary

Lords Amendment 104

79 Lords Amendment 104 inserts a new Clause that is supplementary to Lords Amendment 103. This amendment provides further detail of the matters which may be provided for in regulations in respect of building industry schemes.

“Prohibition on development for prescribed persons

Lords Amendment 105

80 Lords Amendment 105 confers power on the Secretary of State to prohibit a person of a prescribed description from carrying out development of land in England. This includes persons who are eligible to be members of a Building Industry Scheme (Lords Amendments 103 and 104) but are not members of that scheme. The prohibition may be imposed for any purpose connected with securing the safety of persons in or about buildings in relation to risks arising from buildings, or improving the standard of buildings, including by securing that persons in the

building industry remedy defects in buildings or contribute to costs associated with remedying defects in buildings. This prohibition applies even if planning permission has been granted. The clause also details other provision that the regulations may make, including that they may make provision for enforcement.

“Building control prohibitions

Lords Amendment 106

81 Lords Amendment 106 gives the Secretary of State powers to impose a building control prohibition in relation to persons of a prescribed description. The descriptions of persons which may be prescribed include persons who are eligible to be members of a building industry scheme (Lords Amendments 103 and 104) but are not members of such a scheme. The prohibition may be imposed for any purpose connected with securing the safety of persons in or about buildings in relation to risks arising from buildings, or improving the standard of buildings, including by securing that persons in the building industry remedy defects in buildings or contribute to costs associated with remedying defects in buildings. A building control prohibition applies despite any provision made by or under the Building Act 1984. The clause also details other provision that the regulations may make including that anything done in contravention of the regulations is of no effect.

“Building liability orders

Lords Amendment 107

82 Lords Amendment 107 inserts a new clause that confers on the High Court the power to make a Building Liability Order under which relevant liabilities of a body corporate A are also imposed on a specified body corporate B which is associated with body corporate A. The High Court can make the bodies corporate jointly and severally liable for the specified liability. A Building Liability Order can be granted when body corporate A no longer exists.

83 Subsection (3) of the inserted clause provides that a relevant liability is one that is incurred under the Defective Premises Act 1972, section 38 of the Building Act 1984, or as a result of a building safety risk.

“Building liability orders: associates

Lords Amendment 108

84 Lords Amendment 108 inserts a new clause which defines when bodies corporate are associated for the purposes of Building Liability Orders. A body corporate A is associated with a body

corporate B if one controls the other or if both are controlled by a third body corporate.

“Order for information in connection with building liability order

Lords Amendment 109

85 Lords Amendment 109 inserts a new clause which provides the Secretary of State with a power to prescribe the persons who may apply to the High Court for an information order. Once granted, an information order will require a specified body corporate to give specified information or documents about associates of that body corporate to the prescribed person by a specified time.

Lords Amendment to Clause 119: Limitation periods

Lords Amendment 110

86 Lords Amendment 110 is a drafting change.

Lords Amendments to Clause 120: Establishment of the New Homes Ombudsman Scheme

Lords Amendment 111

87 Lords Amendment 111 places the Secretary of State under a duty to consult the “relevant Northern Ireland department” before making arrangements to establish the New Homes Ombudsman scheme.

88 This is consistent with other amendments made to expand the territorial extent and application of the provisions relating to the New Homes Ombudsman scheme to Northern Ireland.

Lords Amendment 112

89 Lords Amendment 112 sets out the definition of “the relevant Northern Ireland department” for the purpose of the consultation duty imposed by Lords Amendment 111, so that it is clear which branch of the Northern Ireland Executive the Secretary of State must consult before making arrangements for a New Homes Ombudsman scheme.

Lords Amendments to Clause 122: “Relevant owner”, “new build home” and “developer”

Lords Amendment 113

90 Lords Amendment 113 provides that any landlord in Northern Ireland leasing a home to an individual occupant meets the “occupation condition” required to be a “relevant owner” of a new

build home, who may have a statutory right under Clause 121 to complain to the New Homes Ombudsman. In England and Wales, residential landlords letting new build homes to individual occupants under longer leases may not qualify as “relevant owners”.

Lords Amendment 114

91 Lords Amendment 114 clarifies that the definition of a “new build home” includes a home created through work on an existing residential building, as well as a home created by the conversion of an existing non-residential building.

Lords Amendment 115

92 Lords Amendment 115 is consequential to the Lords Amendment 114.

Lords Amendment 116

93 Lords Amendment 116 defines a “relevant interest” in land in Northern Ireland for the purposes of clause 122’s definitions of “relevant owner” and “new build home”. These definitions help to establish who has a statutory right under Clause 121 to complain to the New Homes Ombudsman.

Lords Amendment 117

94 Lords Amendment 117 is intended to clarify that the definition of a “developer” for the purpose of the provisions about the New Homes Ombudsman scheme includes a person who creates a home through work on an existing residential building so that it consists of or contains a home.

Lords Amendment 118

95 Lords Amendment 118 is intended to clarify that the definition of a “developer” for the purpose of the provisions about the New Homes Ombudsman scheme includes a person who creates a home through work on an existing residential building which alters the number of homes contained within it.

Lords Amendment 119

96 Lords Amendment 119 makes a consequential amendment following Lords Amendments 117 and 118.

Lords Amendment 120

97 Lords Amendment 120 confers power on a department of the Northern Ireland Executive to make regulations about who is a “developer” for the purposes of the provisions about the New Homes Ombudsman scheme as they apply to Northern Ireland.

Lords Amendment 121

98 Lords Amendment 121 is intended to ensure that the Secretary of State, Welsh Ministers and Scottish Ministers will still be able to make regulations lawfully for their own jurisdictions under Clause 122, even if there is no Northern Ireland department designated for the purposes of making regulations for homes in Northern Ireland. In that case the requirement to consult the “relevant national authority” in Northern Ireland before making such regulations can be satisfied by consulting the Executive Office.

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Lords Amendments to Clause 123: Regulations under section 122

Lords Amendment 122

99 Lords Amendment 122 provides for procedural matters connected to the power conferred on a Northern Ireland department to make regulations regarding the definition of a “developer” under Clause 122.

Lords Amendment 123

100 Lords Amendment 123 provides for the parliamentary procedure for regulations made by a Northern Ireland department regarding the definition of “developer” under Clause 122.

Lords Amendments to Clause 124: Power to require persons to join scheme and provide information

Lords Amendment 124

101 Lords Amendment 124 requires the Secretary of State to consult the relevant department in Northern Ireland before making regulations about the New Homes Ombudsman scheme under Clause 124, for instance to require those who fall within the definition of a “developer” to become and remain members of the scheme.

Lords Amendment 125

102 Lords Amendment 125 sets out which department of the Northern Ireland Executive is “the relevant Northern Ireland department” for the purposes of the consultation duty created by Lords Amendment 124.

Lords Amendments to Clause 126: Developers’ code of practice

Lords Amendment 126

103 Lords Amendment 126 places the Secretary of State under a duty to consult the “relevant department in Northern Ireland” about the Developers’ Code of Practice dealt with by Clause 126.

Lords Amendment 127

104 Lords Amendment 127 explains which department of the Northern Ireland Executive is “the relevant Northern Ireland department” for the purposes of the consultation duty created by Lords Amendment 126.

Lords Amendments after Clause 127

“New build home warranties

Lords Amendment 128

105 Lords Amendment 128 inserts a new clause that requires developers to provide a warranty for all new build dwellings and conversions of/into dwellings when sold (for contracts of sale entered into after the clause and regulations are commenced). The amendment gives the Secretary of State power to impose requirements about new build home warranties including the minimum developer liability period, the minimum length of term (which must be at least 15 years) and minimum standards.

Lords Amendment 129

106 Lords Amendment 129 inserts a new clause which enables the Secretary of State to provide for the enforcement of the warranty requirement (Lords Amendment 128) by the Secretary of State or a designated person. The power enables the Secretary of State to set the penalty for non-compliance with the warranty requirement which will be up to 10% of the sale value of the property or £10,000, whichever is greater. The regulations may also include provision about the procedure to be followed in imposing penalties, for the imposition of interest or additional penalties for late payment and conferring rights of appeal against penalties.

Lords Amendments after Clause 128

Liability relating to construction products: general definitions

Lords Amendment 130

107 Lords Amendment 130 inserts a new clause which sets out definitions that are relevant to the four subsequent new clauses: liability relating to construction products, liability relating to cladding products, liability relating to construction products: limitation in England and Wales, and Liability relating to construction products: limitation in Scotland.

Liability relating to construction products

Lords Amendment 131

108 Lords Amendment 131 creates a new cause of action where a breach of regulations relating to construction products causes, or is a factor in, a building or dwelling becoming unfit for habitation.

Liability for past defaults relating to cladding products

Lords Amendment 132

109 Lords Amendment 132 creates a new cause of action where historical defaults relating to cladding products cause, or are a factor in, a dwelling becoming unfit for habitation.

Liability relating to construction products: limitation in England and Wales

Lords Amendment 133

110 Lords Amendment 133 provides for the limitation periods in England and Wales for the causes of action created by the previous two new clauses: liability relating to construction products, and liability relating to cladding products.

Liability relating to construction products: limitation in Scotland

Lords Amendment 134

111 Lords Amendment 134 provides for the limitation periods in Scotland for the new causes of action relating to construction products.

Costs contribution orders: general definitions

Lords Amendment 135

112 Lords Amendment 135 sets out definitions that are relevant to the clauses relating to costs contribution orders in relation to construction products.

Costs contribution orders made by the courts

Lords Amendment 136

113 Lords Amendment 136 enables the Secretary of State to by regulations make provision for the courts to make costs contribution orders in relation to construction products.

Costs contribution orders made by the Secretary of State

Lords Amendment 137

114 Lords Amendment 137 enables the Secretary of State to by regulations make provision for the

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Secretary of State to make costs contribution orders in relation to construction products.

Costs contribution orders: assessments

Lords Amendment 138

115 Lords Amendment 138 creates a power to make regulations relating to assessments undertaken for the purposes of costs contribution orders.

Lords Amendment to Clause 134: Liability of officers of body corporate etc.

Lords Amendment 139

116 Lords Amendment 139 provides that where resident management companies, RTM companies and commonhold associations appoint a paid director for a building safety purpose, all unpaid directors of the company will be relieved of their personal criminal liability for breaches of their Part 4 duties.

Lords Amendment to Clause 135: Review of regulatory regime

Lords Amendment 140

117 Lords Amendment 140 defines the term 'building function' for the purposes of Clause 135.

Lords Amendments to Clause 137: Crown application

Lords Amendment 141

118 Lords Amendment 141 provides for the new clauses and Schedule relating to the remediation of certain defects to bind the Crown.

Lords Amendment 142

119 Lords Amendment 142 provides for the new clauses on new build home warranties and associated financial penalties to bind the Crown.

Lords Amendment after Clause 137: Application to Parliament

Lords Amendment 143

120 Lords Amendment 143 makes provision about the application of Parts 2 and 4 of the Bill to Parliament.

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Lords Amendment to Clause 140: Regulations

Lords Amendments 144, 145, 146

121 Lords Amendments 144, 145 and 146 are consequential on Lords Amendments 100, 103 and 105.

Lords Amendments to Clause 141: Extent

Lords Amendment 147

122 Lords Amendment 147 provides for certain provisions about the New Homes Ombudsman scheme to form part of the law of England and Wales, Scotland and Northern Ireland.

Lords Amendment 148

123 Lords Amendment 148 provides for the new clauses inserted by Lords Amendments 135 to 138 to form part of the law of England and Wales, Scotland and Northern Ireland.

Lords Amendment 149

124 Lords Amendment 149 is an amendment consequential to Lords Amendment 147.

Lords Amendment 150

125 Lords Amendment 150 provides for the territorial extent of the new clauses relating to construction products: liability relating to construction products and liability for past defaults relating to cladding products. The amendment provides a power to extend the causes of action to Northern Ireland and to make provision as to their application in Northern Ireland.

Lords Amendments to Clause 142: Commencement and transitional provisions

Lords Amendment 151

126 Lords Amendment 151 provides for sections (*Remediation of certain defects*) to (*Meeting remediation costs of insolvent landlord*) and Schedule (*Remediation costs under qualifying leases*) to come into force two months after Royal Assent.

Lords Amendment 152

127 Lords Amendment 152 provides for the new clauses relating to construction products to come into force two months after Royal Assent.

Lords Amendment 153

128 Lords Amendment 153 is consequential on Lords Amendment 154 (and also corrects the numbering of the paragraphs referred to).

These Explanatory Notes relate to the Lords Amendments to the Building Safety Bill as brought from the House of Lords on 5th April 2022 (Bill 299)

Lords Amendments to Schedule 5

Lords Amendment 154

129 Lords Amendment 154 omits section 44, concerning Crown Application, and section 45, concerning the Atomic Energy Agency, of the Building Act 1984. Sections 44 and 45 were not commenced. The amendment is consequential on Lords Amendment 31.

Lords Amendment 155

130 Lords Amendment 155 is consequential on the repeal of section 16 of the Building Act 1984 provided for by paragraph 20 of Schedule 5.

Lords Amendment 156

131 Lords Amendment 156 removes the definition of “the data protection legislation” from new section 91B of the Building Act 1984 with a view to it being inserted into section 126 of the Building Act 1984 (general interpretation) by amendment 158. It is consequential on amendment 17.

Lords Amendment 157

132 Lords Amendment 157 provides that references in inserted section 105C of the Building Act 1984 to work include a material change of use and may include any other specified matter.

Lords Amendment 158

133 Lords Amendment 158 inserts a definition of “the data protection legislation” into section 126 of the Building Act 1984. It is consequential on amendment 17.

Lords Amendment 159

134 Lords Amendment 159 is consequential on amendment 154.

Lords Amendments to Schedule 7

Lords Amendments 160, 163, 165, 169, 176, and 181

135 These Lords Amendments are consequential on the amendments removing Clauses 80 to 84 (provision about building safety managers).

Lords Amendments 161, 162, 164, 177 to 178, and 182

136 These Lords Amendments are consequential on the removal of the building safety charge as a separate charge.

Lords Amendment 166

137 Lords Amendment 166 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

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paragraph 7 of the Schedule.

[Lords Amendment 167](#)

138 Lords Amendment 167 is consequential on Lords Amendment 176.

[Lords Amendments 168, 170, 172 to 175](#)

139 These Lords Amendments are consequential on Lords Amendment 166.

[Lords Amendment 171](#)

140 Lords Amendment 171 defines relevant right or liability for the purposes of paragraph 7 of the Schedule.

[Lords Amendments 179 and 180](#)

141 These Lords Amendments are consequential on Lords Amendment 181.

Lords Amendment removing Schedule 8

[Lords Amendment 183](#)

142 Lords Amendment 183, which removes schedule 8 from the Bill is consequential on the removal of the building safety charge as a separate charge.

Lords Amendment before Schedule 9: Remediation Costs Under Qualifying Leases

[*Lords Amendment 184](#)

143 Lords Amendment 184 inserts a new schedule which outlines the conditions under which the service charge is not payable in respect of relevant defects. No service charge is payable under a qualifying lease in relation to relevant defects for which landlord or associate is responsible or if a landlord meets the contribution condition. No service charge is payable for cladding remediation. Paragraph 6 provides that the permitted maximum leaseholder contribution is zero, which was introduced through a non-government amendment.

Lords Amendments to Schedule 9

[Lords Amendment 185](#)

144 Lords Amendment 185 is intended to ensure that the New Homes Ombudsman scheme includes provision about providing information to the relevant department in Northern Ireland, if the scheme is maintained by a person other than the Secretary of State.

[Lords Amendment 186](#)

145 Lords Amendment 186 sets out which department of the Northern Ireland Executive is “the

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relevant Northern Ireland department” for the purposes of the consultation duty created by Lords Amendment 185.

Lords Amendments to Schedule 11

Lords Amendment 187

146 Lords Amendment 187 is to enable construction product regulations to make consequential amendments to the clause relating to liability in relation to construction products.

Lords Amendment 188

147 Lords Amendment 188 makes a technical correction to secure the maximum fine that can be imposed under construction product regulations for an offence in Scotland or Northern Ireland is the statutory maximum.

Lords Amendment 189

148 Lords Amendment 189 requires that the draft affirmative procedure is used to make any regulations that would remove construction products from the list of safety-critical products that will be set out in construction products regulations.

Lords Amendment 190

149 Lords Amendment 190 makes regulations that are made under the proposed power to make consequential provision relating to liability for construction products to be subject to the draft affirmative procedure.

Lords Amendment 191

150 Lords Amendment 191 enables a statutory instrument to contain both construction products regulations and regulations relating to costs contribution orders, provided that the instrument is made subject to the draft affirmative procedure.

Financial Effects of Lords Amendments

151 A number of Lords Amendments may have financial implications. Unless addressed below, the financial implications will be considered in detail in the preparation of the relevant regulations.

152 Lords Amendment 6, which requires the Building Safety Regulator to assess and report on the benefits and costs of certain measures to improve the safety of people in or about buildings. These activities come under the existing scope of Clause 5 and costs associated with that function.

153 Lords Amendment 17 provides BSR with a clearer basis to conduct inspections. This has always been the policy intent for the oversight of building control performance and it should not have

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any additional cost implication. The Health and Safety Executive will set its cost recovery mechanisms in due course. Local authorities may recover administrative costs in relation to delivering amendments 22-30 alongside their building control functions.

154 In relation to Lords Amendments 111 to 113, 116, and 120 to 127, the New Homes Ombudsman scheme will be set up on a cost-recovery basis, so that expanding its geographical scope will have a very small increase in costs, which will be recovered from a larger number of developers.

BUILDING SAFETY BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

These Explanatory Notes relate to the Lords Amendments to the Building Safety Bill as brought from the House of Lords on 5 April 2022.

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