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Fifth Report of Session 2019–21

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Housing, Communities and Local Government Committee

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Summary

The purpose of the draft Building Safety Bill is to remedy the flaws in the building safety regime identified by Dame Judith Hackitt in her final report, Building a Safer Future Independent Review of Building Regulations and Fire Safety, commissioned by the Government following the Grenfell Tower fire on 14 June 2017. It aims to do so principally by establishing a regulator, the Building Safety Regulator, to oversee a rigorous new regulatory regime for the design, construction and occupation of higher-risk buildings.

We believe the draft Bill could dramatically improve building safety but are concerned about some of its provisions and, in particular, the lack of detail on key parts of the new regime. Our key recommendations are as follows:

- ***We urge the Government to include as much detail in the Bill itself or to publish the secondary legislation alongside it. It is especially important that this be done for core provisions such as the Gateways process and the regulation of construction products.***

The draft Bill is largely a framework Bill that provides for key parts of the new regulatory regime to be established by delegated legislation and building regulations. We accept that much of the detail belongs elsewhere, as it could not sensibly be included in the Bill itself, but this is not always the case, and even where it is reasonable for the Bill to rely on delegated legislation, we do not think it possible to properly scrutinise its provisions without sight of that draft legislation.

- ***We recommend that the Government publish with the Bill a clear timetable for commencement so it is clear by when the industry has to demonstrate compliance and the Building Safety Regulator establish the regime.***

The final Bill will establish new duties, some of them extremely onerous, on individuals and organisations responsible for building safety throughout the lifecycle of higher-risk buildings. We do not think it right to expect individuals to implement its provisions and assume such heavy responsibilities without sufficient transition periods.

- ***The Government must recommit to the principle that leaseholders should not pay anything towards the cost of remediating historical building safety defects, and, in order to provide leaseholders with the peace of mind they deserve, amend the Bill to explicitly exclude historical costs from the building safety charge.***

The draft Bill provides for landlords to recover the cost of building safety measures through a new building safety charge. Contrary to repeated assurances from Ministers, these provisions permit landlords to charge leaseholders for the cost of remediating historical building safety defects for which they were not responsible. We consider this unacceptable and an abdication of responsibility on the part of government.

- ***The Government must announce, before it publishes the Bill, its proposals for funding all historical building safety remediation works. These proposals should impose no costs on leaseholders and explicitly acknowledge that in the short term the Government must foot the bill, until such time as mechanisms for cost recovery have been developed.***

The financing of remediation works remains unresolved, despite the allocation of £1.6 billion in the building safety fund. If the costs are not to be borne by leaseholders, the Government must propose an alternative source of funding, and to our mind there are only two viable and acceptable options: central government and industry. However it chooses to fund the work, it must publish its proposals with the draft Bill, as no future building safety regime can be adequate that does not also remedy historical defects.

- ***We strongly recommend that the initial scope of the regime be enshrined in the Bill itself, and not be left to delegated legislation, in order to give stakeholders the certainty they need to prepare for the new regime.***

The new regulatory regime will apply to higher-risk buildings, and yet the definition of "higher-risk building" is missing from draft Bill, being left instead to the explanatory notes, which merely state the Government's current intention. We think that by putting this central pillar of the new regime in the Bill itself the Government will give dutyholders the certainty they need to prepare for implementation and ease the transition to full compliance.

- ***We recommend that the Government specify in the Bill itself by way of a requirement to "have regard" the factors that must be considered in the future when the scope of the regime is expanded and that the ability of residents to evacuate the building be the principal factor. We also recommend that any requirement to have regard to the ability of residents to evacuate a building explicitly include both the vulnerability of residents and the number of means of egress. Finally, we recommend that the Government indicate its intention to review the scope and set a timetable for doing so.***

The Government currently intends to define "higher-risk building" essentially as any building over 18 metres or six storeys. We accept that this is a reasonable initial scope, given the challenge of establishing such a demanding new regime, but we do not consider height alone to be a satisfactory measure of risk. A commitment in the Bill itself to including, at a specified point in the future, other risk factors, particularly the vulnerability of residents and their ability to evacuate the building, would demonstrate the Government's determination to improve the safety of all higher-risk buildings.

- ***We strongly recommend that the Government include provisions in the Bill itself for establishing a national system of third-party accreditation and registration for all professionals working on the design and construction of higher-risk buildings.***

The Hackitt report found that a lack of any formal process for assuring the competence of individuals engaged in the design and construction of higher-risk buildings was a serious flaw in the current regulatory regime. To remedy this, the final Bill should

provide for a robust system of third-party accreditation and registration for design and construction professionals. We can think of few measures that will do more to improve building safety.

- ***We recommend that dutyholder choice be removed entirely from the building control system and replaced by a system of independent appointment, and that this be made explicit either in the Bill or in secondary legislation to be published alongside it.***

The Hackitt report identified the ability of dutyholders to choose their own building control body and the conflict of interesting proceeding from that as the major weakness of the current building control regime. Despite this, the draft Bill only removes dutyholder choice from building work on higher-risk buildings and so does nothing to remove conflicts of interest from the vast majority of building work. Only by removing it completely can the Bill provide for a genuinely reliable system of building control.

- ***We recommend that the Bill provide for a general duty to co-operate on accountable persons in respect of buildings for which there are multiple accountable persons and that the Government publish statutory guidance alongside the Bill setting out the sorts of behaviours that would be expected under such a duty.***

The draft Bill provides for owners of higher-risk buildings to be appointed as accountable persons to act as dutyholders in occupation. Some buildings, however, depending on their ownership structure, will have multiple accountable persons, which could result in confusion over where responsibility lies. A general duty to co-operate would be the simplest way of mitigating a problem that is an unavoidable consequence of existing legal complexity.

- ***We recommend that the Government publish statutory guidance alongside the Bill outlining how it expects accountable persons and responsible persons to co-operate in practice. In the longer term, we recommend that the Government review the operation of the two regimes with a view to rationalising and simplifying the legislation.***

The role of the accountable person established in the draft Bill is similar to that of the responsible person established under the Regulatory Reform (Fire Safety) Order 2005. Instead of rationalising building safety legislation, the Government has chosen to add an extra layer, which could result in overlapping responsibilities and consequent confusion. In the short term, statutory guidance is the best way to reduce confusion, but in the long term the Government might have to consider consolidating the two regimes.

- ***The Government must announce before the Bill is published whether it intends to adopt the competency framework for the role of building safety manager proposed in the report from Working Group 8. If it does not, it must publish with the Bill the full details of the framework it does intend to adopt.***

In requiring the accountable person to appoint a building safety manager to oversee the day-to-day management of building safety risks, the draft Bill creates an entirely new profession, and one that will be crucial to the success of the new regime. It is envisaged that building safety managers will be highly trained and competent people. An expert panel established by the Government, known as Working Group 8, has drawn up a proposed competence framework for the role of building safety manager, but the Government has not said if it intends to adopt it. The industry cannot begin to recruit and train people to fill these roles without sight of the competences. If the Government does not produce them soon, the implementation of the new regime could be greatly impeded.

- ***We recommend that the Government provide, either in legislation or in statutory guidance, for a national system of accreditation to agreed common standards and for a central register of building safety managers.***

Given how critical building safety managers will be to the new building safety regime, we do not see how that regime can succeed other than by requiring prospective building safety managers to demonstrate competence. A robust system of accreditation and registration will give accountable persons and residents confidence in the competence of those appointed to the role and make more likely a genuinely robust system of building safety.

- ***We recommend that the Government provide for the publication of test failures and re-run tests and for the establishment of an independent and unified system of third-party certification in order to introduce greater transparency and rigour into the regulation of construction products.***

The Hackitt report found that the product testing regime was opaque and that greater transparency was required, but whilst the draft Bill includes provisions for regulating construction products, it contains little detail, especially on the future testing regime. Only by requiring the publication of test results and by providing for third-party certification can the Government enable real transparency.

Introduction

Background

1. The intention behind the draft Building Safety Bill is to deliver on the Government's commitment to reforming the building safety system made following the Grenfell Tower fire on 14 June 2017. The fire, which killed 72 people, focused attention on the flaws in the regulation of building safety and the competence of the construction industry, in particular because of the speed at which the fire spread up the building. As the public inquiry later found, the rapid spread of the fire was caused by the presence of aluminium composite material (ACM) cladding on the external walls, which acted "as a source of fuel for the growing fire".[1] The inquiry also concluded that the building façade almost certainly did not comply with building regulations.[2]

2. In July 2017, the Government commissioned Dame Judith Hackitt, a former chair of the Health and Safety Executive, to lead a review of building regulations and fire safety and to make recommendations for strengthening the building safety regime. Dame Judith's final report, which laid out a new regulatory framework for higher-risk residential buildings (HRRBs), found

> a cultural issue across the sector, which can be described as a 'race to the bottom' caused either through ignorance, indifference, or because the system does not facilitate good practice. There is insufficient focus on delivering the best quality building possible, in order to ensure that residents are safe, and feel safe.[3]

3. In June 2019, the Government launched a consultation on proposals for reforming the building safety system, *Building a Safer Future: proposals for reform of the building safety regulatory system*,[4] to which our Committee responded in our report, *Building Regulations and Fire Safety*.[5] In April 2020, following the final report from the Expert Group on Structure of Guidance to the Building Regulations, the Government also published plans to review Approved Document B (the part of building regulations dealing with fire safety) with a view to fundamentally rethinking building design. We welcome this review, which goes beyond higher-risk buildings, and look forward to its conclusion. On 20 July 2020, the Government published the draft Bill, and on 29 July the Minister of State for Building Safety and Communities, Lord Stephen Greenhalgh, asked us to undertake pre-legislative scrutiny.

Structure of the draft Bill

4. The draft Bill has five parts. Part 1 provides an overview of the Bill. Part 2 establishes a new regulator, the Building Safety Regulator, within the HSE and defines both its general duties and functions and the scope of the regulatory regime for higher-risk buildings, though it provides for the meaning of "higher-risk building" to be prescribed in secondary

1 Report of the Public Inquiry into the Fire at Grenfell Tower, October 2019, paras 23.52
2 Ibid, 26.4
3 Independent Review of Building Regulations and Fire Safety: final report, 17 May 2018, page 5
4 Building a Safer Future: proposals for reform of the building safety regulatory system, June 2019
5 Housing, Communities and Local Government Committee, Seventeenth Report of Session 2017–19, Building regulations and fire safety: consultation response and connected issues, HC 2546, 18 July 2019

legislation. Part 3 aims to improve industry competence by laying the groundwork for a new dutyholder regime during the design and construction phase of higher-risk buildings and by making changes to the building control profession.

5. Part 4 of the draft Bill continues the dutyholder regime into occupancy by establishing the roles of accountable person and building safety manager and makes provisions for improving resident engagement. It also allows for landlords to recover the cost of building safety measures through the imposition of a building safety charge on leaseholders. Part 5 provides for the regulation of construction products, for a new homes ombudsman scheme, for disciplinary orders against architects to be listed alongside their entries in the register of architects, and for the removal of the "democratic filter", which requires social housing residents to refer complaints to a "designated person" or wait eight weeks before being able to access redress through the Housing Ombudsman.

6. Our report largely follows the structure of the draft Bill, but starts with a few general observations on some overarching themes, to which we turn in the next chapter. We have appended at the Annex a schedule of minor or technical deficiencies we found during scrutiny.

Our inquiry

7. In his letter on 29 July inviting our Committee to scrutinise the draft Bill, the Minister emphasised his intention to bring the final Bill before Parliament as soon as possible in 2021 and expressed his hope therefore that we would complete "in good time". He also recommended that we invite the scrutiny of experts from the House of Lords, particularly Lord Kennedy, Lord Best and Lord Porter.[6] Accordingly, we wrote to Lord Blencathra, Chair of the Delegated Powers and Regulatory Reform Committee, on 28 September, seeking their assistance with our inquiry. We are grateful for the constructive way officials from the Ministry of Housing, Communities and Local Government engaged with us during the inquiry, in particular the Bill Manager, Amy Payne.

8. In addition, our inquiry benefited from written and oral submissions from a range of experts and stakeholders. We received 430 written submissions and heard oral evidence from 21 experts representing a range of interested parties, including the Government, the construction industry, the insurance industry, the fire and rescue service, leaseholders, the property management industry and the Health and Safety Executive. We are grateful to everyone who took the time to contribute to our inquiry.

9. We are particularly grateful to the many individual leaseholders who told us about the problems with their buildings, the emotional toll it was taking and their fears about some of the provisions in the Bill. We were unable in our report to refer directly to much of it, but we were moved by their evidence and used it to inform the chapter on leaseholders and the building safety charge.

6 Letter from the Minister for Building Safety and Communities to the Chair dated 29 July 2020 concerning pre-legislative scrutiny of the draft Building Safety Bill

General Observations

Support for policy intention behind the draft Bill

10. We warmly welcome the policy intention behind the draft Bill. It is a profoundly important step towards remedying the flaws in the building safety regime identified in the Hackitt report, as was recognised in nearly all the evidence we received; we heard overwhelming support for its general intent. The Chartered Institute of Building said the draft Bill set out "a compelling vision for the future of the industry"[7] whilst Zurich called it a "significant step towards ensuring that building regulations are both up-to-date and fit for purpose".[8] The Local Government Association said it was "an important step in the right direction" and expressed confidence that it would "strengthen the building safety system in the UK, especially in relation to new buildings."[9] The Fire Action Safety Group called the Bill a "positive first step", whilst the London Fire Brigade said it went a "long way towards meeting the policy objective of a robust regime".[10] We agree with the evidence.

Reliance on secondary legislation

11. As was noted throughout the evidence to our inquiry, the draft Bill is largely a framework Bill and leaves much of the detail of the new regime to secondary legislation. Zurich said that the "development of the detailed secondary legislation will be key to its success" and that "whilst the Bill establishes the overarching framework it does little to define how the new regulatory system will operate, the requirements the system will define and impose, and how they will be enforced."[11] Whilst this is unsurprising, as the existing regime for building control relies so heavily on secondary legislation, we were told it made effective scrutiny of some parts either difficult or impossible. The Leasehold Knowledge Partnership, which thought the Bill's complexity alone made scrutiny challenging, said the problem was "made worse because much of the Bill will be defined by future regulations". It said there were 569 references in the draft Bill to "regulations", most of which had not yet been produced, and concluded: "Everyone, including your committee, is therefore required to make huge guesses at how the bill might work in practice."[12]

12. Witnesses generally agreed that many details rightly belonged in secondary legislation and did not need to be available for effective scrutiny of the Bill,[13] but we also heard about central elements that were barely mentioned in the Bill itself. For example, the Bill omits even an *initial* definition of the "higher-risk buildings", which goes to the very heart of the scope of the new regime.[14] Other vital provisions, such as the "Gateways" process and the regulation of construction products, go to the core of the Bill, as the Local Government Association pointed out, yet are completely missing from it.[15] It is left to secondary legislation, but there are no draft regulations available to scrutinise. On the regulation

7 Chartered Institute of Building (BSB0335)
8 Zurich Insurance (BSB0422)
9 LGA (BSB0062)
10 Fire Safety Action Group (BSB0138); London Fire Brigade (BSB0270)
11 Zurich Insurance (BSB0422)
12 Leasehold Knowledge Partnership (BSB0255)
13 For example, the United Kingdom Accreditation Service (BSB0267) makes this point about oversight of the proposed new product testing regime.
14 See further below, at para 56
15 LGA (BSB0062)

of construction products, the Chartered Institute of Building told us that much of the legislation was "intentionally designed to be carried through via secondary legislation at a later date" and that the industry would need "much greater detail about the exact nature of construction products regulations".[16] Our scrutiny of the Bill was greatly impeded by the absence of such detail.

13. Furthermore, many of the powers to make secondary legislation are very broad. Perhaps the most striking example of the sweep of some of these is paragraph 16(1) to Schedule 8, which provides for a power to repeal, amend or re-enact not only retained EU law and the Construction Products Regulations 2013[17] but any enactment other than this draft Bill. Whilst such regulations would be limited to purposes set out in paragraph (2) of the schedule, there is no apparent justification for the power to amend *primary* legislation, and nor is it expressly acknowledged as a "Henry VIII power" by the Government.[18] In its report on the scrutiny of secondary legislation,[19] the House of Lords' Constitution Committee expressed and reported increasing concern about the use of broad powers and welcomed the Strathclyde Review's acknowledgment that "it would be appropriate for the Government to take steps to ensure that Bills contain an appropriate level of detail and that too much is not left for implementation by statutory instrument."[20] Although delegated legislation is necessary to facilitate the transition from EU-derived law, the Constitution Committee recommended this be limited to consequential technical amendment rather than policy areas. This power as drafted may allow policy-driven change to primary legislation.

14. **We warmly welcome the policy intent behind the draft Bill and believe it to be a crucial step towards remedying the flaws in the building safety regime identified in the Hackitt report. Nonetheless, whilst recognising that it provides the framework for the new regulatory regime and must necessarily lack certain details, we agree that it relies very heavily on secondary legislation and that the absence of detail greatly impeded the process of pre-legislative scrutiny.**

15. ***We urge the Government to include as much detail in the Bill itself or to publish the secondary legislation alongside it. It is especially important that this be done for core provisions such as the Gateways process and the regulation of construction products.***

16. ***Moreover, any powers in the Bill to amend primary legislation should be included only where fully justified and necessary to implement the framework set up by the Bill. They should be limited to the minimum needed to make this new policy work rather than accommodate all future policy change. For example, if primary legislation might stand in the way of some future exercise of the power to make construction product regulations, it could be expressly amended or repealed now rather than swept away by Government under paragraph 16(1)(c) of Schedule 8.***

16 Chartered Institute of Building (BSB0335)

17 SI 2013 No 1387

18 MHLCG, *Memorandum concerning the Delegated Powers in the Bill for the Delegated Powers and Regulatory Reform Committee* ("Delegated Powers Memorandum") (July 2020)

19 House of Lords Constitution Committee, Ninth Report of Session 2015–26, Delegated Legislation and Parliament: A response to the Strathclyde Review, HL Paper 116, paras 43–44.

20 Cabinet Office, *Strathclyde Review: Secondary legislation and the primacy of the House of Commons*, Cm 9177 (December 2015)

Transition to new regime

17. Closely related to the publication of the secondary legislation was the concern around implementation and transition periods. We were told repeatedly that as well as sight of the secondary legislation all those with responsibilities under the draft Bill needed sufficient time to transition to full implementation and that the Government needed to publish such a timetable as soon as possible.[21] Again on construction products, the CIB warned that the Bill's reliance on secondary legislation meant it would take time to implement and that this would be "exacerbated by the fact that many within the industry are currently hesitating to take action until they have clarification about the final form that the legislation will take".[22] London Councils told us that the new responsibilities on councils would not be deliverable without a phased roll-out of the new regime. It recommended a five-year transition for building owners "to deliver the required safety improvements" and the sector more broadly "to upskill and develop capacity to service demand for technically competent professionals".[23]

18. Places for People, the property management and development company, said there was a "need for clear guidance on an implementation timetable and an associated transition period", whilst UK Finance was worried about deliverability and capacity in the industry to provide sufficient expertise to implement the regime without sufficient transition periods.[24] The Building Safety Register was concerned about implementation, especially of the regulatory regime for in-scope legacy buildings, given their number and the onerous duties on accountable persons. It told us it could not be done quickly and that clear "staging dates" would be required, including provision for buildings to be prioritised according to risk, with the highest risk being brought onstream first.[25]

19. **We agree completely that those being given additional and sometimes onerous responsibilities under the Bill cannot reasonably be expected to implement its provisions and move to full compliance without sufficient and clearly described transition periods.**

20. ***We recommend that the Government publish with the Bill a clear timetable for commencement so it is clear by when the industry has to demonstrate compliance and the Building Safety Regulator establish the regime.***

21 As well as those submissions individually cited, we heard this point from, among others, the Future of Building Control Working Group (BSB0054); National Housing Federation (BSB0418); Working Group 8 of the Competence Steering Group (BSB0427); Salix Homes (BSB0297); Institute of Workplace and Facilities Management (IWFM) (BSB0426); British Property Federation (BSB0358)

22 Chartered Institute of Building (BSB0335)

23 London Councils (BSB0208)

24 Places for People (BSB0290); UK Finance (BSB0256)

25 Building Safety Register (BSB0088)

1 Leaseholders and the building safety charge

Background

21. Clauses 88 and 89 of the draft Bill amend the Landlord and Tenant Act 1985 to establish a building safety charge payable by tenants with long leases (over 21 years) to facilitate the recovery of costs incurred by the landlord in the monitoring and managing of building safety. Such costs might arise, among other things, from the carrying out of building safety works, the production of the safety case report, the appointment of the building safety manager, resident engagement and the day-to-day monitoring of building safety. According to the explanatory notes, the charge is to be a separate charge from the service charge "so that costs incurred on building safety measures will be readily identified and accounted for."[26]

Remediation of historical safety defects

Leaseholder liability

22. As drafted, clauses 88 and 89 permit leaseholders to be charged for the cost of remediating historical safety deficiencies for which they were not responsible, which may have pre-dated their occupation, and regardless of whether at the time of any earlier work the building complied with prevailing safety requirements. Nothing aroused nearly so much anger or upset in the evidence to our inquiry. One submission, from the Franklin House Leaseholders Syndicate, described it as "shocking",[27] whilst Swish Residents Association thought the Bill failed to address

> the injustice of leaseholders having to foot the bill for the incompetence, negligence and/or unlawful actions of those who have a legal duty of care towards those who buy and inhabit the property.[28]

23. The Local Government Association, in describing these provision as the Bill's "greatest shortcoming", thought that leaseholders "should not be left to pick up the pieces of the broken building safety system".[29] Giles Peaker, a prominent housing lawyer, described the provisions as "inherently unfair",[30] and another submission, from leaseholder Mr Bullock, thought the provisions based on the "pre-conception that a leaseholder should be made financially liable for all the failings and shortcoming of every regulatory body and everyone else involved."[31] Even the HSE, otherwise very supportive of the Bill, did not think that leaseholders should "have to worry about the cost of fixing historic safety defects in their buildings that they did not cause."[32] Quite simply, no one besides the Government thinks the leaseholder should pay.

26 Explanatory Notes to the draft Building Safety Bill [CM 264 (2019–21) -EN], para 668
27 Franklin House Leaseholders Syndicate (BSB017)
28 The Swish Residents Association (BSB0011)
29 LGA (BSB0062)
30 Mr Giles Peaker (BSB0298)
31 Mr Bullock (BSB020)
32 Health and Safety Executive (BSB0424)

24. As noted in the evidence, these provisions contradict repeated ministerial assurances, given since the Grenfell Tower fire, that leaseholders would and should not have to pay for remediation works. There are too many to quote them all, but on 27 February 2019 the then Prime Minister, Theresa May, told the House of Commons:

> As I have said previously, we fully expect building owners in the private sector to take action, make sure appropriate safety measures are in place, and not pass costs on to leaseholders.[33]

25. The present Government appeared to recommit to this principle when, on 20 July 2020, the Secretary of State, Robert Jenrick, in his written statement announcing publication of the draft Bill, wrote:

> The Government are clear that it is unacceptable for leaseholders to have to worry about the cost of fixing historic safety defects in their buildings that they did not cause.[34]

26. We note with concern, however, that both the Secretary of State, later in his statement, and the Housing Minister, Christopher Pincher, who reiterated this commitment in a written ministerial answer on 16 October, went on to say:

> We must remove barriers to fixing historic defects and identify financing solutions that protect leaseholders from unaffordable costs.[35]

27. The second sentence appears to contradict the first, as we think it unlikely that leaseholders would not "worry" about the prospect of being protected only from "unaffordable costs". The explanatory notes reiterate this change in policy, stating it is "the policy intention that as far as possible leaseholders should not have to face unaffordable costs".[36] The Minister failed in oral evidence to satisfactorily define "affordable", suggesting only that it implied any costs that did not bankrupt a person.[37] Leaving aside the question of whether "affordable" could ever signify anything meaningful in this context, we are disappointed that the Government could countenance the idea of a single leaseholder being bankrupted by these provisions, as implied by the words "as far as possible".

28. This changed policy intention was flagged up repeatedly in evidence. Martin Boyd, from the Leasehold Knowledge Partnership, told us in oral evidence:

> We have had nearly 1,200 days of Secretaries of State saying that leaseholders should not be paying for defective buildings. It is not their fault; they did not build them; they had no means to know when they were buying their homes that they were going to be deemed defective later on. This Bill then flips that round and says, 'We will specifically make you, as the leaseholder, liable for all historical defects'.[38]

33 HC Debate, 27 February 2019, col 331 [Commons Chamber]
34 HC Deb, 20 July 2020, col 89WS [Commons written ministerial statement]
35 Ibid; PQ 100374 [on buildings: insultation], 16 October 2020
36 Explanatory Notes to the draft Building Safety Bill [CM 264 (2019–21) -EN], para 672
37 Qq246–51
38 Q141

29. We were disappointed by the Minister's response when we asked him about this policy shift; he observed only that it was before his time and that he personally had never held that view,[39] which is surprising given his evidence to our cladding inquiry earlier this year:

> We believe that those costs should not fall on leaseholders. I feel very bad about that. I really stand four-square behind the leaseholders. This is not something that should be burdening them. It is the responsibility of the building owner to make the building safe.[40]

30. In our report following that inquiry, *Cladding: progress of remediation,* we concluded:

> Funding of remediation should reflect where blame lies. It is clear that there have been widespread failures. What is also clear, however, is that residents are in no way to blame and it is our view that they should bear none of the cost of remediation.[41]

31. **We continue to believe that residents should not bear any of the costs of remediating historical building safety defects and are deeply concerned by the Government's failure to protect them from these costs. We are especially disturbed by its commitment to protecting them only from "unaffordable costs". It would be unacceptable and an abdication of responsibility to make them contribute a single penny towards the cost of remediating defects for which they were not responsible.**

32. ***The Government must recommit to the principle that leaseholders should not pay anything towards the cost of remediating historical building safety defects, and, in order to provide leaseholders with the peace of mind they deserve, amend the Bill to explicitly exclude historical costs from the building safety charge.***

Responsibility for funding remediation

33. As noted, we concluded in our cladding report that responsibility for funding remediation "should reflect where blame lies",[42] and that principle holds good for all remediation works, not just the removal of dangerous cladding. In our view, there are only two sources of viable funding: industry and government. In the same report, we concluded:

> Given the urgency of these remediation works, it is necessary for the Government to provide the funding up front. However, it cannot be fair for the financial burden of remediating buildings to rest solely with taxpayers. Those who are responsible for this crisis should be made to contribute.[43]

39 Q246
40 Q38
41 Housing, Communities and Local Government, Second Report of Session 2019–21, Cladding: progress of remediation, HC 172, para 43
42 Housing, Communities and Local Government Committee, Second Report of the Session 2019–21, Cladding: progress of remediation, HC 172, para 43
43 Ibid, para 44

34. The evidence was almost unanimous on this question of who should pay. Martin Boyd told us in oral evidence that "only two groups … are potentially liable for these defects, either the developers or the Government. We had either defective regulations or defective building."[44] The LGA wrote:

> Government needs to fund a recovery programme in the housing sector and the developers who have profited from providing inadequate buildings should be required to pay their share of the costs.[45]

35. The Birmingham Leaseholder Action Group said "sufficient funds should be made available by Government to fix these buildings as soon as possible, with these costs being recouped by Government from those responsible."[46] Franklin House Leaseholders Syndicate thought "the Government should clarify its commitment to pay these costs".[47]

36. Whilst the evidence placed varying emphasis on either government or industry funding, there was broad agreement that the only realistic and reasonable solution was a combination of the two. In this regard, we acknowledge evidence from Michael Wade, expert adviser to the Department, that the Government were working to identify "potential funding options",[48] besides leaseholders, for funding remediation, but we regret its failure to commit any more of taxpayers' money beyond the £1.6 billion in the building safety fund, which we heard was "expected to fall short of what is required to pay for remediation of legacy buildings around the country".[49] We agree that, in the words of UK Finance, the Government "should provide sufficient funding to accelerate and scale-up the remediation of affected buildings".[50]

37. We briefly note, too, that the Bill does not address the need to pursue developers for inadequate historic work. We understand there are legal obstacles to building owners (other than original owners, who might be able to rely on a contract) claiming against developers for "pure economic loss", where homes are defective but no physical damage has yet been caused, more than six years after the building was completed.[51] We note only that other jurisdictions have taken measures. For example, New South Wales in June enacted legislation placing a duty on builders to exercise care to avoid economic loss, with 10 years' retrospective effect.[52]

38. **It seems self-evident that responsibility for funding remediation works lies jointly with the industry and the Government. Whilst we welcome the assurances that the Government is looking at potential financing options for recovering costs, in the short**

44 Q141
45 LGA (BSB0062)
46 Birmingham Leaseholder Action Group (BSB0153)
47 Franklin House Leaseholders Syndicate (BSB017)
48 Q235
49 FIRSTPORT (BSB0042)
50 UK Finance (BSB0256)
51 Because there is a specific duty under section 1 of the Defective Premises Act 1972 which such owners might rely on, but it is subject to the limitation period of 6 years from completion (or later rectification work by the builder): see s 1(5). This was illustrated in relation to cladding recently in the High Court: *Sportcity 4 Management Limited v Countryside Properties (UK) Limited* [2020] EWHC 1591 (TCC).
52 Ie, except for any loss which was apparent before June 2010. See the Design and Building Practitioners Act 2020 (NSW), s 37 and Sched 1 para 5. See also Society of Labour Lawyers (BSB0155) and Bell, "New rectification powers and a statutory duty of care in NSW: a game changer for resident safety?", Oxford University Faculty of Law blog, accessed 12 November 2020

term we see no alternative to the Government itself, and therefore the taxpayer, footing much of the bill. We can think of no other means by which the necessary works can be carried out quickly enough.

39. ***The Government must announce, before they publish the Bill, its proposals for funding all historical building safety remediation works. These proposals should impose no costs on leaseholders and explicitly acknowledge that in the short term the Government must foot the bill, until such time as mechanisms for cost recovery have been developed. We also urge the Government to explore the options for reform of the law preventing building owners with no contractual remedy claiming against developers for defective construction more than 6 years old which has not caused damage. The New South Wales legislation offers a possible model.***

Building safety charge

40. One of the most controversial aspects of the building safety charge provisions is the requirement that leaseholders pay it within 28 days of demand.[53] The National Leasehold Campaign described the 28 days as "ridiculously short" and "cruel and unnecessary",[54] whilst the Chartered Institution of Building Services Engineers called it "insufficient and quite unrealistic". Councillor Christine Hulme, on behalf of leaseholders in Slough, wrote:

> The biggest worry for many of these residents is the proposal that leaseholders must pay building owners within 28 days of the time the bill was issued. Many leaseholders find this timescale completely unreasonable.[55]

41. Another concern is the Government's proposed power to impose consultation requirements in respect of "qualifying" building safety works. We presume (though there is no assurance) this power would be exercised similarly to that in relation to service charges.[56] However, we were told that in practice where fire safety works are recoverable under existing service charges, tribunals will usually allow consultation to be dispensed with.[57] This is unsurprising: the works are usually urgent and the tribunal acts on the basis that very urgent works are obvious cases for dispensation with consultation.[58] If landlords can recover the cost of remedying existing fire safety defects through the building safety charge, it seems likely that the cost of remediation—at least where urgent—will pass to leaseholders without much, or any, consultation. This will be the case already where that cost is recoverable under the service charge provisions of existing leases, but—as a number of witnesses told us—service charge provisions in leases often provide that "improvements" are not chargeable to leaseholders.

42. **The requirement to pay the building safety charge within 28 days of demand and the lack of effective consultation protection simply compound the unfairness, and potentially catastrophic consequences, of allowing leaseholders to be charged the cost of remedying historic defects. The 28-day deadline seems particularly unreasonable.**

53 Clause 88
54 National Leasehold Campaign (NLC) (BSB0406)
55 Cllr Christine Hulme (BSB0073)
56 In section 20 of the Landlord and Tenant Act 1985
57 See Bright, "St Francis Tower: 'Staggering failures' – Part 1: Dispensation from consultation for making a building safe" (2019) accessed 27 October 2020.
58 *Daejan Investments Limited v Benson and others* [2013] UKSC 14, at [56].

43. ***If the Government does not adopt our recommendation to protect leaseholders from all historic costs, we ask at the very least that it give them significantly longer than 28 days to pay the building safety charge and amend the provisions to make it clear that the consultation requirements should be dispensed with only in exceptional circumstances, even in the case of building safety works.***

Separation of building safety charge from service charge

44. As noted, the stated intention behind having a separate charge is to "give leaseholders greater transparency around costs incurred in maintaining a safe building".[59] We are concerned, however, that the principal reason is rather to facilitate the charging of leaseholders for the remediation of historical defects. The Minister, Lord Greenhalgh, appeared to admit as much in oral evidence, when asked about the separation:

> We need to understand that leases are written in different ways and service charges do not all operate in the same way. I have seen views of lawyers that indicate it may be very hard to put costs that relate to historical defects through the service charge in some cases.[60]

45. We acknowledge that some submissions, most notably that from the HSE,[61] accepted the Government's argument that a separate charge would facilitate transparency. Among others, Consensus Business Group, the professional freeholder, argued that "a number of costs which hitherto have been included within the service charge, which would fall more naturally into the BSC" and further that separating the charges "should also help to focus all stakeholders' minds to the importance of building safety some costs".[62] We understand the case for a separate charge, and we believe that it has some merit, but, as we have already noted, we are concerned that the real reason is to facilitate the inclusion of costs for the remediation of historical defects.

46. Besides this, we heard strong opposition to a separate charge from those worried that it would increase bureaucracy and administration costs. Dr Nigel Glen, CEO of the Association of Residential Managing Agents, told us:

> It does not make sense to me to have the building safety charge, apart from transparency, outside the service charge. I think that enters a whole new regime of costs that we do not need. They are not necessary. You have to have separate bank accounts, separate debt recovery, separate everything, so that is double the amount of administration.[63]

47. Wallace Partnership Group, the professional freeholder, was worried that disputes might arise over which charge different types of expenditure should fall within and wondered why an unnecessary extra layer of bureaucracy was being introduced. The Institute of Residential Property Management thought it would be "simpler, cheaper and easier" to stick with existing service charge provision. It argued that the cost of

59 HC Deb, 20 July 2020, col 89WS [Commons written ministerial statement]; see also Explanatory Notes, para 668
60 Q252
61 Health and Safety Executive (BSB0424)
62 Estates and Management, Consensus Business Group (BSB0416)
63 Q158

administering a separate trust client account and separate accounting regime would result in "bank charges being incurred by the managing agent, which will ultimately end up in additional costs being paid by the leaseholder."[64]

48. Property management and leaseholders' support groups predicted that cost and complexity of administration would be compounded by legal dispute and loss of protection for tenants. Although the IRPM explained that the Government's approach had been to take "large chunks of existing service charge provisions and near-replicate them outside the protection of existing service charge legislation", it felt that "important leaseholder protections" had been removed:

> Leasehold and service charge law is governed by a handful of statutes and a great deal of case law, built up over the last 35 years. Creating 'similar but different' provisions will return to zero the case law process in the name of the BSC and we should expect the new rules to be similarly tested in Tribunals and Courts over the coming years.[65]

49. Dr Glen of ARMA suggested there would be "years" of legal disputes involving "loads of test cases with managing agents dragged into that and leaseholders paying for it."[66] The Leasehold Knowledge Partnership thought the draft Bill "removes many of the existing, albeit weak, protections under existing leasehold law", and that leaseholders' rights to challenge would be "after the event; at their own expense; with no chance of recovering their costs if the AP and RP overspend". Others thought that existing tribunal decisions suggested challenges to the building safety charge would be hard to win.[67]

50. In particular, many witnesses suggested the draft Bill bypassed the protection provided by the requirement to consult in respect of works which will cost any leaseholder, through the service charge, more than £250.[68] The provisions in relation to consultation over the building safety charge are near identical. The threshold above which there must be consultation is—as with service charges—to be set out in, or determined by, regulations.[69] The regulations will be subject to the same level of parliamentary scrutiny in both cases.[70] If the Government exercises its powers identically under both provisions, no protection appears to be lost.[71]

51. Integrating the new charge with service charges presents new difficulties. The Government implies in the draft Bill that not all long leases have service charge provisions[72] and nobody has suggested otherwise. We recognise the difficulties which might be faced in ensuring that all leaseholders be required to contribute to ongoing safety costs, regardless of whether there is a service charge provision, and that the method the Government has

64 Institute of Residential Property Management (BSB0401)
65 Institute of Residential Property Management (BSB0401)
66 158
67 Riverside Quarter London SW18 Residents Association (BSB0167)
68 Under Landlord and Tenant Act 1985, s 20 and the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003 No 1987). See Mrs Giles (BSB0025), among others, and Q158.
69 New s 17K(5) of the 1985 Act, inserted by cl 89
70 New s 17L; cf s 20ZA of the 1985 Act
71 There is little in law to prevent the Government raising the consultation threshold for service charges. As noted, the same degree of Parliamentary scrutiny would apply.
72 New s 17I(7) of the 1985 Act

adopted attempts to solve that conundrum. But we do not think the difficulties insuperable. There could be default provision (similar to the proposed sections 17G to 17X) for leases without service charges,[73] and application to the tribunal as a last resort.

52. The transparency the Government relies upon as justifying the separate BSC[74] could be achieved by "levelling up" the transparency of service charges. The requirements to provide leaseholders with service charge information, enacted in 2002 and amended in 2008, have never been brought into force.[75] This Committee's predecessor recommended in 2019 that:

> The Government should require the use of a standardised form for the invoicing of service charges, which clearly identifies the individual parts that make up the overall charge.[76]

This improvement, if enacted carefully, would provide ample transparency for the building safety-related elements of a service charge.

53. **We do not think it necessary to establish the building safety charge separate from the service charge. Aside from the unnecessary additional bureaucracy and administration costs, a separate charge means additional, separate, bills for leaseholders at intervals and within periods which may differ from those in their leases. The same benefits of transparency (the Government's justification for a separate charge) can be achieved by implementing our previous recommendation on standardised forms for service charge invoices.**

54. ***The Government should provide for recovery of ongoing building safety costs through existing service charge provisions while improving the transparency of such charges, preferably by implementing the Committee's previous recommendations for standardised forms for service charge invoices. The building safety charge should be reserved only for any leases without a service charge and should be treated as a service charge for the purposes of leaseholder protection.***

73 "Service charge" is defined in s 18 of the Landlord and Tenant Act 1985

74 See para 72 above

75 Landlord and Tenant Act 1985, s 21, as substituted by Commonhold and Leasehold Reform Act 2002, s 152 and Housing and Regeneration Act 2008, Sched 12 para 2.

76 HCLG Committee, *Leasehold Reform, Twelfth Report of Session 2017–19* (HC 1468) (Mar 2019), para 153

2 The Building Safety Regulator

Scope of the regime

55. Under Part 2 of the Bill, the regulator will regulate building safety risks with a view to securing the safety of people in or about higher-risk buildings. According to clause 16, a "building safety risk" is a risk arising from fire, structural failure or any other prescribed matter. According to the explanatory notes, the Government proposes initially to define "higher-risk building" essentially as any building that is at least 18 metres or six storeys tall and contains either two or more dwellings or student accommodation.[77]

Meaning of "higher-risk building"

56. As already noted, the initial scope of the regime (the definition of "higher-risk" building) is set out in the explanatory notes and described only as a proposal. We do not see why it should not be in the Bill itself. Even Sarah Albon, chief executive of the HSE, who otherwise supports the initial scope, agreed it would be helpful if it were set out in primary legislation.[78]

57. ***We strongly recommend that the initial scope of the regime be enshrined in the Bill itself, and not be left to delegated legislation, in order to give stakeholders the certainty they need to prepare for the new regime.***

58. The proposed scope is wider than that recommended in Dame Judith Hackitt's report, which would have covered all buildings with 10 or more storeys and did not include student accommodation. The more ambitious scope in the explanatory notes was welcomed by the Institute of Materials Minerals and Mining:

> Extending the proposed scope of 'higher-risk building' further from buildings containing more than the 10 storeys recommended in the Judith Hackitt Review to buildings containing more than 6 storeys is a positive step, as is the inclusion of student accommodation.[79]

59. This view was echoed by Graham Watts, chief executive of the Construction Industry Council, who described the reduction from 10 storeys as a "move in the right direction", and by Adrian Dobson, from the Royal Institute of British Architects, though he would have preferred a threshold of 11 metres.[80] Sir Ken Knight, chair of the Building Safety Independent Expert Advisory Panel, also welcomed the inclusion of student accommodation.[81] Dame Judith Hackitt, too, said she was "comfortable" with the widened scope, adding she had always envisaged the scope would be widened over time.[82]

77 Explanatory Notes to the draft Building Safety Bill [CM 264 (2019–21) -EN], p 39
78 Q185
79 The Institute of Materials, Minerals and Mining (IOM3) (BSB0414)
80 Q33
81 Q9
82 Q202

60. Nonetheless, we heard repeatedly that risk cannot be determined by the height of a building alone. It was described as "too blunt an instrument" by the London Fire Brigade and as "too simplistic" by the LGA, whilst AXA UK said that relying too much on height was "misguided".[83]

61. There was strong support for including buildings with vulnerable residents within the scope of the regime. Lord Porter, from the LGA, said the scope had to be based, among other things, on the "risk presented to the people occupying each building", and in its written submission the LGA asked for a "firm commitment on the face of the Bill to extending the scope at the very least to all care homes".[84] AXA UK called for "buildings that accommodate vulnerable people such as hospitals, hospices and care homes" to be brought in scope.[85] The London Fire Brigade and the Mayor of London were also concerned about the exclusion of care homes and places where vulnerable people sleep.[86] Dame Judith Hackitt, too, in her oral evidence, recommended that factors such as vulnerability be included in the future.[87]

62. London Councils, the Fire Brigades Union and the LGA agreed with Adrian Dobson, from RIBA, that the height threshold should be reduced to 11 metres, though there was some disagreement about whether that should be done now or in the future. The LGA said the Government should commit to a "clear timescale" for reducing the threshold in the future, while the Fire Brigades Union implied it should done from inception, citing evidence of an elevated risk of fire and fatalities in buildings over 11 metres.[88] We also heard support for extending the scope to include all consequence class 3 buildings[89] and buildings built using modern methods of construction (MMC), since some are untested and have demonstrated increase fire risk.[90]

63. It was not always clear if a submission was arguing for a wider scope from the beginning or for a commitment to extend it in the future, but almost everyone agreed that in theory height alone was insufficient. Whilst we find this argument incontrovertible, we were nonetheless convinced by the evidence from the HSE in defence of the proposed initial scope. It recognised that it was "contentious" and that some stakeholders considered it "too crude a risk factor" but said it was "an appropriate starting point given that the consequences of fire are likely to be more significant in higher buildings owing to the numbers of people and the limited escape options."[91] Furthermore, given that the initial scope is already expected to capture between 12,000 and 13,000 buildings, we accept that widening the scope now would only add to the already formidable challenge now facing the HSE.

64. On these grounds, many agreed that the proposed scope was reasonable and practical. The Chartered Institution of Building Services Engineer argued that "an initial focus on the scope currently proposed to establish the new regime is reasonable, realistic and manageable. Anything broader is probably not."[92] Graham Watts, the chief executive of

83 London Fire Brigade (BSB0270); LGA (BSB0062); AXA UK (BSB0280)
84 Q99 LGA (BSB0062)
85 AXA UK (BSB0280)
86 London Fire Brigade (BSB0270); Mayor of London (BSB0423)
87 Q203
88 LGA (BSB0062); The Fire Brigades Union (BSB0066)
89 Structural-Safety (BSB0039); Mineral Products Association (BSB0082)
90 Sir Robert McAlpine (BSB0377); Zurich Insurance (BSB0422); AXA UK (BSB0280)
91 Health and Safety Executive (BSB0424)
92 Chartered Institution of Building Services Engineers (BSB0410)

the Construction Industry Council, told us in oral evidence that if "you expand the scope to begin with by too much, you will create a situation where the capacity issues become a problem, so it is a question of getting the balance".[93] The Institute of Materials Minerals and Mining put it most succinctly when it called the appropriate scope "a complex balance between risk and the successful implementation of the regulatory regime".[94]

65. **On balance, we consider the initial definition of "higher-risk building" proposed by the Government to be reasonable and practical, though we agree with the evidence calling for the scope to be widened in the future to include a great number of risk factors. In particular, the scope should take account of the vulnerability of residents and their ability to evacuate the building. We also think the Government should keep under review the development of modern methods of construction.**

66. ***We recommend that the Government specify in the Bill itself by way of a requirement to "have regard" the factors that must be considered in the future when the scope of the regime is expanded and that the ability of residents to evacuate the building be the principal factor. We also recommend that any requirement to have regard to the ability of residents to evacuate a building explicitly include both the vulnerability of residents and the number of means of egress. Finally, we recommend that the Government indicate its intention to review the scope and set a timetable for doing so.***

Definition of "building safety risk" (clause 16)

67. The regulator's duty to facilitate building safety in or near higher-risk buildings is engaged in respect of building safety risks. A "building safety risk" is defined in clause 16 as any risk to the safety of persons in or about a building arising from fire, structural failure, or any other prescribed matter. The explanatory notes state that the scope is only intended to encompass major and rapid onset events and that the Government "has no current plans for the higher-risk building regime to extend beyond the risks of fire and structural integrity."[95]

68. There was some opposition in the evidence to the limited definition of "building safety risk". The submissions from Working Group 8 and the Institute of Workplace and Facilities Management, for example, called for a more "holistic" or "whole building" approach to building safety that extended beyond fire and structural safety, and criticised the Government's avowed intention not to use the provisions allowing for the expansion of the regime to other building safety risks.[96]

69. More specifically, the evidence from electrical safety organisations, such as ECA, the trade association, and Electrical Safety First, urged the inclusion of "electrical safety failure" within the definition and scope of the regime, given the number of fires in residential blocks caused by electrical failures.[97] Similarly, the Specialist Engineering Contractors Group also called for the significant safety risks presented by electrical, as well as gas, installations, to be covered.[98]

93 Q33
94 Institute of Materials, Minerals and Mining (IOM3) (BSB0414)
95 Explanatory Notes to the draft Building Safety Bill [CM 264 (2019–21)-EN], paras 211–12
96 Working Group 8 of the Competence Steering Group (BSB0427); Institute of Workplace and Facilities Management (IWFM) (BSB0426)
97 ECA (BSB0257); Electrical Safety First (BSB0053)
98 Specialist Engineering Contractors' (SEC) Group (BSB0281)

70. **We recognise that the definition of "building safety risk" is central to the scope of the regime and should be given careful consideration, but on balance we are satisfied with the current wording of clause 16. In particular, we judge that fire would be the main rapid onset event arising from an electrical or gas failure and that therefore these are probably already caught by the clause, although we would welcome clarification on this point, particularly with regard to gas failures that could result in explosion.**

71. ***Given the importance of the right definition of "building safety risk", we recommend that the Government clarify, perhaps in statutory guidance, the extent to which dutyholders need to consider risks arising from electrical and gas failures. We also recommend that the Government commit to keeping the definition under review.***

Duties and functions of the regulator

Inclusion of property protection among the regulator's objectives

72. Clause 3 provides that the regulator must exercise its building functions with a view to securing the safety of people in or about buildings. Some submissions criticised this exclusive focus on the protection of life and safety and recommended the inclusion of property protection among the list of objectives. Some thought it mattered in its own right, such as the Association for Specialist Fire Protection, which argued for its inclusion "to limit the financial, environmental, and emotional impact of fire events",[99] whilst others, such as ROCKWOOL, the insulation manufacturer, believed it would further reduce risk to life as well as risk to property: "If measures are taken to protect property from fire … this will self-evidently reduce the risk to both property and life".[100]

73. The evidence from Richmond House residents, about the fire in Worcester Park in 2019 that destroyed the homes and possessions of 60 residents, including 17 children, highlighted the emotional and psychological impact of fire even when no lives are lost:

> We lost our homes and all of our possessions in the fire and today we are in temporary accommodation, uncertain of how to rebuild our lives… Many of us, including children, are deeply traumatized and continue to suffer from serious psychiatric and psychological illnesses caused by our experiences of the fire and by seeing our homes and possessions destroyed.[101]

74. **We understand the argument for including property protection among the regulator's objectives, but we are content that the list of objectives in the draft Bill is a sensible starting point, although we think that it should be kept under review.**

75. ***We recommend that the Government keep the objectives of the regulator in clause 3 under review and that it consider including property protection among them once the regime has been established. To this end, we recommend that the Government take a power in the Bill to amend by regulations the list of the regulator's objectives.***

99 Association for Specialist Fire Protection (BSB0272)
100 ROCKWOOL Ltd (BSB0332)
101 Richmond House residents (BSB0143)

Duty to establish system for giving of building safety information (clause 8)

76. Clause 8 provides that the regulator must "establish and operate a system to facilitate the voluntary giving of information about building safety to the regulator, or make arrangements for a person to establish and operate such a system." According to the explanatory notes, the current proposal is for this duty to be discharged using the Confidential Reporting on Structural Safety system (CROSS), once expanded to cover fire safety as well as structural safety.[102]

77. Structural-Safety, which operates CROSS, and several other respondents objected to clause 8(a), which provides for the regulator to operate the system itself. They argued that if such a system is run by the regulator individuals might fear disciplinary action if they report problems. Structural-Safety cited aviation as an example of an industry that recognises this principle. Its concern was echoed by the Institution of Structural Engineers, the Mineral Products Association and the Construction Industry Council.[103]

78. We put these points to Peter Baker, director of building safety and construction at the HSE, and Sarah Albon, its chief executive, when they appeared before our Committee, but we did not think their response, which concentrated on the importance of encouraging a culture of self-reporting, provided sufficient reassurance.[104]

79. ***We recommend that clause 8 be amended to provide that the regulator must direct someone else to operate the system for the giving of building safety information and cannot itself operate that system***

Duty to establish and maintain a Building Advisory Committee, a Committee on Industry Competence and a Residents' Panel (clauses 9, 10 and 11)

80. Clauses 9, 10 and 11 establish committees to support the regulator. There was complete support for their creation but also concern about the provisions in clause 12 empowering the Secretary of State to alter their functions or abolish them altogether. ROCKWOOL wanted this power removed and Sir Ken Knight, from the Building Safety Independent Expert Advisory Panel, thought it "odd", particularly in relation to the Building Advisory Committee.[105] In particular, he noted that the BAC was to replace the Building Regulations Advisory Committee, which is a statutory committee that can only be abolished by primary legislation. The Bill does that but then replaces it with a committee that the Secretary of State can unilaterally abolish.[106]

81. The Chartered Institution of Building Services Engineers shared these concerns, describing clause 12 as "'Henry II powers' for riddance of any 'turbulent committees'".[107] In oral evidence, Dr Debbie Smith, from BRE Global, Peter Caplehorn, CEO of the Construction Products Association, and Dr Scott Steedman, director of standards at

102 Explanatory Notes to the draft Building Safety Bill [CM 264 (2019–21)-EN], para 168
103 Structural-Safety (BSB0039); Institution of Structural Engineers (BSB0250); Mineral Products Association (BSB0082); Construction Industry Council (BSB0133)
104 Q192
105 ROCKWOOL Ltd (BSB0332)
106 Q6
107 Chartered Institution of Building Services Engineers (BSB0410)

the British Standards Institution, all struggled to understand the intention behind the provisions.[108] We note, too, that the Minister, when asked about this in oral evidence, offered no rationale for the Henry VIII power in clause 12 and instead sought our opinion.[109]

82. **We see no justification for the provision in clause 12 empowering the Secretary of State to abolish the Building Advisory Committee, the Committee on Industry Competence and the Residents' Panel, and can see no circumstances in which this power would ever sensibly be used.** ***We recommend that clause 12 be amended to delete the Secretary of State's power to abolish.***

Operation and funding of the Building Safety Regulator

Is it right to establish the Building Safety Regulator within the Health and Safety Executive?

83. The evidence overwhelmingly supported the Building Safety Regulator being established within the HSE.[110] Dame Judith Hackitt said the HSE was "very experienced in delivering a regulatory system that is outcomes-based and proportionate" and had a "wealth of experience in the construction industry".[111] Sir Ken Knight welcomed the HSE's "vast historical experience" in the area, and Graham Watts was "strongly supportive" and said the HSE had "a great deal of credibility".[112] Nottinghamshire Fire and Rescue Service called it a "positive appointment" and said the HSE was "well-established and recognised throughout the industry".[113]

84. We should note that some evidence expressed concern about the HSE's reactive and sanctions-based style of regulation and argued for a more proactive, inspection-based style. Butler and Young Approved Inspectors wrote:

> Questions remain over how exactly the BSR will operate–whether it will impose what would be considered a more traditional HSE-style reactive system of on-site fines and sanctions or a more proactive system in supporting the delivery of safe buildings.[114]

85. The Fire Sector Federation, though resigned to the decision, criticised the HSE's reliance "on self-compliance and prosecution after failure" and argued for a more proactive regulatory regime.[115]

86. **We welcome the location of the regulator within the Health and Safety Executive and agree that it has the experience and expertise to implement the new building safety regime. We are satisfied that the provisions in the Bill already mandate a regulatory model focused as much on inspection during construction as on sanctions for non-compliance.**

108 Q79
109 Q288
110 Among others, it was welcomed by: National Fire Chiefs Council (BSB0304); AXA UK (BSB0280); Construction Industry Council (BSB0133); Chartered Institute of Architectural Technologists (CIAT) (BSB0285); LABC (BSB0307)
111 Q207
112 Q3, 32
113 Nottinghamshire Fire and Rescue Service (BSB0027)
114 Butler & Young Approved Inspectors Limited (BSB0357)
115 Fire Sector Federation (BSB0390)

How should the regulator be funded?

87. The Hackitt report recommended that the regulator be part funded through a process of cost recovery,[116] and the explanatory notes state the Government's expectations that the regulator will "charge fees for its activities as a building control authority" and "where appropriate for other functions it performs under the Building Act 1984 (e.g. applications for registration as a registered building inspector)."[117] To this end, clause 33 gives the Secretary of State the power to make regulations authorising the regulator to charges fees and recover charges.

88. The evidence agreed that the regulator should be part funded through a system of cost recovery from regulated parties.[118] Butler and Young Approved Inspectors, for example, said there was "general cross-sector agreement that the cost should be borne by industry through application fees".[119] The National Housing Building Council welcomed the adoption of a "user pays" model, whilst CICAIR agreed that its income should be "derived from the registration and audit fees paid by Building Control bodies and individual professionals",[120] though some submissions requested greater clarity on the precise charging regime. The HSE outlined in its written submission the principles it intended to apply to the regime, but Peter Baker, its director of building safety and construction, said that the detail had yet to be confirmed. He did add, though, that the principles ranged from "hourly rates for work actually done to fees for intervention … based on the degree of breach of the law."[121]

89. There was also agreement, however, that not all of the regulator's activities could be funded through cost recovery and that where this was not possible central funding would be required. The Chartered Association of Building Engineers said that the regulators "core functions" should be "directly funded by central Government so that the core knowledge and capability of the regulator is not affected by fluctuations in construction activity across the economic cycle."[122] The Construction Industry Council said it would need to be funded "by a mix of public funds and by recovering costs from regulated parties".[123] AXA UK said that, given the "over 50 per cent real terms reduction in the regulator's budget between 2010 and 2017 and the raft of additional specialist responsibilities the body will be taking on," the Government must consider "ringfenced funding throughout the next multi-year spending period" to ensure the regulator "can deliver the much needed regulatory and enforcement changes".[124] On this point, we were partially reassured by the evidence from the Minister, Lord Greenhalgh, which seemed to imply that the Government were committed to ringfenced funding, though his precise meaning was perhaps open to interpretation.[125]

116 Independent Review of Building Regulations and Fire Safety: final report, 17 May 2018, page 22, recommendation 1.2
117 Explanatory Notes to the draft Building Safety Bill [CM 264 (2019–21)-EN], para 490
118 Chartered Institute of Architectural Technologists (CIAT) (BSB0285); Fire Sector Federation (BSB0390); Construction Industry Council (BSB0133); Chartered Association of Building Engineers (BSB0428)
119 Butler & Young Approved Inspectors Limited (BSB0357)
120 National House Building Council (NHBC) (BSB0322); Construction Industry Council Approved Inspectors Register (BSB0310)
121 Q177
122 Chartered Association of Building Engineers (BSB0428)
123 Construction Industry Council (BSB0133)
124 AXA UK (BSB0280)
125 Q285

90. **We welcome the intention to fund the regulator through a system of charging and cost recovery, and we are satisfied that the Government and the HSE are working on the detail, but we agree they should publish that detail as soon as possible. We also welcome the Minister's partial commitment to ringfenced funding for those functions of the regulator that cannot easily be financed by the market, although we would welcome a firmer commitment from the Government in that regard.**

91. ***We recommend that the Government publish with the Bill the details of the charging regime that the regulator will operate to fund its regulatory functions, where cost recovery is practical, and commit unequivocally to ringfenced central funding to cover the cost of functions for which cost recovery will not be possible.***

3 Design and construction

Industry competence

92. The Hackitt report found that "a lack of skills, knowledge and experience and a lack of any formal process for assuring the skills of those engaged at every stage of the life cycle of higher risk residential buildings" was a "major flaw in the current regulatory system".[126] To remedy this, Part 3 of the draft Bill provides in skeleton form for the establishment of a dutyholder regime at the design and construction phase of higher-risk buildings based on the principle that those who create a risk should be responsible for managing it. It does this by providing, in clause 38, that building regulations may require the appointment of dutyholders and specify their general duties and, in clause 39, that building regulations may impose competence requirements on those dutyholders. Finally, it includes (in clause 39) provisions to improve competence levels in the building control sector.

93. Whilst there was unanimous support for the policy intention of raising levels of industry competence, we were told that real culture change could only be driven by the industry itself. The LGA told us:

> Dame Judith's report saw a culture change in the building industry as an essential pillar of the new system. Such a change cannot be guaranteed in legislation and will only take place once the industry recognises the need for change and acts upon it.[127]

94. The submissions from the Chartered Institute of Architectural Technologists and the Chartered Institution of Building Services Engineers made the same point.[128] Similarly, we heard that a focus on dutyholder roles would not suffice to drive up competence throughout the industry. The Institute of Workplace and Facilities Management talked about an "entire ecosystem of stakeholders working in buildings in a manner that affects fire and structural safety" and concluded that unless competence was embedded throughout that ecosystem "it will not only be difficult for the three key competent roles to discharge their duties" but "the whole culture change ambition outlined by Dame Hackitt will remain elusive."[129]

95. Everyone agreed, however, that a robust regulatory framework was a necessary prerequisite to driving up competence levels, and there was broad support for the principle of the dutyholder regime and the system of Gateways. Graham Watts said: "the principle of the gateways and the clear accountability of duty holders is the backbone of this Bill, and we absolutely support it."[130] The LGA said that the Gateways "sit at the very heart of the regime".[131]

126 Report of the Public Inquiry into the Fire at Grenfell Tower, October 2019, paras 5.1
127 LGA (BSB0062)
128 Chartered Institute of Architectural Technologists (CIAT) (BSB0285) Chartered Institution of Building Services Engineers (BSB0410)
129 Institute of Workplace and Facilities Management (IWFM) (BSB0426)
130 Q44
131 LGA (BSB0062)

Dutyholder regime

Role of principal designer

96. According to the explanatory notes, the Government intend the dutyholder roles to which it will require appointments under clause 38 to include those appointed under the Construction (Design and Management) Regulations 2015, of which the most important are the principal designer and principal contractor. There was support for alignment with the CDM regulations, but we were told that the proposed exercise of powers under the Bill added further competences, in particular to the role of principal designer. This was welcomed by some. Dr Scott Steedman, director of standards at the British Standards Institution, welcomed the read-across but noted that the Bill needed "to go beyond" CDM without creating new roles. He concluded:

> I am a supporter of the idea of a principal designer having to demonstrate additional competencies that relate to this issue of major incidents, preventing the occurrence or controlling the impact of major incidents in the future, or over the long term. There is a read-across, but it is a different set of skills.[132]

97. On the other hand, the Construction Industry Council, noting that the roles of principal designer and contractor envisaged for the new dutyholder regime would require different competences from those in the CDM regulations, thought this "doubling-up" of responsibilities would require careful consideration. It even wondered if the new regime was not based on an "incorrect assumption" about the role of principal designer and suggested a different title to differentiate it from the role in the CDM regulations.[133] The same concern was echoed by the Chartered Institute of Architectural Technologists.[134]

98. **We are persuaded that the role of principal designer in the CDM regulations differs from the one envisaged for the new dutyholder regime and that this could cause confusion in the industry.**

99. ***We recommend that the Government work with the industry to identify and resolve any potential confusion, including, if necessary, by redefining the role of principal designer intended under the proposed new dutyholder regime. We also recommend that the role be defined in secondary legislation and that this be published alongside the Bill.***

Access to professional indemnity insurance

100. We heard concern about the ability of dutyholders to access professional indemnity insurance.[135] Graham Watts, from the CIC, described the market as "very, very challenging" and not far from "market failure", whilst Adrian Dobson, from RIBA, said it was "nearly at crisis point". The Association for Project Safety said its members had "expressed concerns about the ability of practitioners to obtain professional indemnity insurance as the scope

132 Q81
133 Construction Industry Council (BSB0133)
134 Chartered Institute of Architectural Technologists (CIAT) (BSB0285)
135 Construction Leadership Council Professional Indemnity Insurance Sub-Group (BSB0185); International Underwriting Association (BSB0323); Construction Industry Council (BSB0133); British Property Federation (BSB0358); Working Group 8 of the Competence Steering Group (BSB0427); Chartered Institute of Building (BSB0335)

of responsibilities explored seems extremely wide".[136] The International Underwriting Association said the "new 'dutyholder' regime will likely open up additional areas of risk for insurers during the design and construction of buildings".[137]

101. Some witnesses told us that once the Government had published the precise responsibilities of the various dutyholder roles the industry would be able to develop the right insurance products. James Dalton, from the Association of British Insurers, said the important thing was "clarity of role, responsibility and accountability" because that was "what an insurer can price a risk based on". Sarah Albon thought it "should be possible for the insurance industry to come up with appropriate products" and pointed to other, more hazardous sites, such as offshore oil refineries, where that had happened. She added that "provided the roles and responsibilities are clearly defined, and any limitation on them is also clearly defined, I expect that the insurance market will respond."[138] Dame Judith Hackitt agreed and thought that "fear will diminish as we are clear about people's roles and responsibilities."[139]

102. We think that the potential liability of dutyholders during the construction of a higher-risk building, and extent to which insurance may be needed for them, is unclear and will depend on how the Government exercises the powers in clause 38 providing for the general duties of dutyholders to be prescribed in building regulations.[140]

103. **We are persuaded that dutyholders at the design and construction phase could struggle to access professional indemnity insurance, although we think this will depend on how the Government chooses to exercise its powers in clause 38. For this reason, we believe that early publication of the general duties of dutyholders could help to alleviate concern in the industry and facilitate the development of appropriate insurance products.**

104. ***We recommend that the Government consult further with the insurance industry and introduce the Bill only when it (a) can publish for simultaneous consideration draft building regulations showing how it will exercise its powers under clause 38 (dutyholders and general duties) and (b) has commissioned an evaluation of the availability of adequate insurance for all dutyholders, and reported accordingly to Parliament.***

Accreditation and registration

105. The Hackitt report called for the establishment of "formal accreditation of those engaged at every stage of the life cycle of HRRBs" but said that this process should "be led by those industry bodies which cover the sectors and roles involved in building work".[141] In this respect, we heard examples of the various standards being developed by industry to raise levels of competence in design and construction, such as the Electrotechnical Assessment Standards (EAS) 2020, which came into force on 1 September 2020,[142] but we were also told that third-party accreditation and registration for such schemes

136 Association for Project Safety [APS] (BSB0116)
137 Construction Leadership Council Professional Indemnity Insurance Sub-Group (BSB0185); International Underwriting Association (BSB0323)
138 Q190
139 Q215
140 Inserting new paragraph 5A into Schedule 1 of the 1984 Act.
141 Independent Review of Building Regulations and Fire Safety: final report, 17 May 2018, p 74, para 5.3
142 ECA (BSB0257); Specialist Engineering Contractors' (SEC) Group (BSB0281)

was essential.[143] Dr Scott Steedman, director of the British Standard Institution, told us it was "really important" there was "independent third-party accreditation of the industry schemes that the various associations and professional bodies are developing or improving".[144] The Institution of Structural Engineers said it was "inconceivable that professional practitioners operating on higher-risk structures will not have a demonstrable record of tested competence and qualification in structural engineering" and that it was working with the Department and the HSE on structural safety registers of competence".[145]

106. The Specialist Engineering Contractors' Group argued for a system of licensing based on accreditation by reputable industry accreditation bodies, whilst the International Underwriting Association said that "mandatory Third Party Certification for construction firms" would make the industry safer, give insurers greater confidence and bring consistency to legislation.[146] Among many others, we also heard from the Association of Specialist Fire Protection about the need for third-party accreditation of installers of passive fire protection and from Eaton UK about the importance of accreditation and registration schemes for installers of electrical items.[147] We note, however, that none of the submissions made specific recommendations for how the draft Bill could be amended to facilitate third-party accreditation.

107. **It seems to us that few measures are more important to raising levels of industry competence than a system of third-party accreditation and registration for design and construction professionals and that the Government must include provision in the Bill itself for the establishment and national oversight of such a system.**

108. ***We strongly recommend that the Government include provisions in the Bill itself for establishing a national system of third-party accreditation and registration for all professionals working on the design and construction of higher-risk buildings.***

Gateway process

109. The Gateway process is both an essential part of the new regulatory regime and completely missing from the Bill, all the detail having been left to delegated legislation, the proposed content of which is set out in the explanatory notes. As the LGA told us:

> Despite their absence from the Bill, these Gateways sit at the very core of the new system. They provide the regulator with an opportunity to ensure new buildings meet the right standards and without them it will be difficult for the Building Safety Regulator to prevent more dangerous buildings from being constructed. Without them, the Bill cannot achieve the Government's aims for new buildings.[148]

143 International Underwriting Association (BSB0323); Chartered Institute of Building (BSB0335); United Kingdom Accreditation Service (BSB0267); Association for Specialist Fire Protection (BSB0272); Specialist Engineering Contractors' (SEC) Group (BSB0281); Institution of Structural Engineers (BSB0250); ECA (BSB0257)

144 Q77

145 Institution of Structural Engineers (BSB0250)

146 International Underwriting Association (BSB0323)

147 Association for Specialist Fire Protection (BSB0272); Eaton UK (BSB0266)

148 LGA (BSB0062)

110. Likewise, Adrian Dobson, from RIBA, said that the principles of the process were "very good" but thought the Bill lacked detail.[149] We should acknowledge, however, that the evidence was generally relaxed on this point.

111. **We accept that the detail of the Gateways is best left to secondary legislation, but we think it is essential that this detail be published as soon as possible so that the industry can start to prepare for implementation.** ***We recommend that the details of the Gateway process be published in draft secondary legislation at the same time as the Bill.***

112. The biggest criticism of the Gateways process, based on the proposals in the explanatory notes,[150] concerned the impact on Gateway one of the Government's proposed extension of permitted development rights (PDR). According to the explanatory notes, "the requirements of Planning Gateway one will not apply" where under PDR a planning application is not required,[151] and yet, as Adrian Dobson explained, "you could easily imagine that there could be quite a lot of conversion to multiple occupancy residential accommodation through permitted development".[152] London Councils noted "the propensity of these buildings to have safety issues" and asked that the provisions be amended, concluding: "We cannot compromise safety for the pace and scale of development".[153] The Greater Manchester High Rise Task Force, noting the "numerous examples in Greater Manchester of conversions undertaken without planning approval under permitted development posing a risk to residents", described the exemption as "astonishing".[154]

113. **We are concerned that the Government's proposed extension of permitted development rights would allow many building projects to bypass Gateway one and thereby weaken the whole regulatory framework for the design and construction of higher-risk buildings.** ***We urge the Government, if it does proceed with its PDR proposals, nonetheless to find a way of retaining the benefits of Gateway one.***

114. We heard a further concern that, as the explanatory notes explain, Gateway one will occur "before dutyholders are required to be in place", its requirements instead being met "by those applying for planning permission".[155] As Peter Caplehorn, CEO of the Construction Products Association, told us in oral evidence:

> At the moment, the documentation says that gateway one would be instigated prior to any professionals being engaged. I fail to see how that is going to happen, in that gateway one effectively requires you to have a set of planning documents and a fire assessment at that stage, as I understand it. That needs to be done by a professional. It needs to be done properly.[156]

115. The same concern was echoed by Adrian Dobson, from RIBA, and Graham Watts, chief executive of the Construction Industry Council.[157]

149 Q31
150 c 11–12
151 Explanatory Notes to the draft Building Safety Bill [CM 264 (2019–21)-EN], para 44
152 Q44
153 London Councils (BSB0208)
154 Greater Manchester High Rise Task Force (BSB0411)
155 Explanatory Notes to the draft Building Safety Bill [Bill 264 (2019–21)-EN), para 41
156 Q91
157 Q44

116. **We are persuaded that Gateway process would be greatly enhanced by a requirement to appoint dutyholders before Gateway one.** ***We recommend that the secondary legislation that will establish the Gateway process mandate the appointment of dutyholders before Gateway one.***

Building Control Reform

117. The Bill seeks to improve competence levels and accountability in the building control sector by creating a unified professional and regulatory structure for building control by amending the Building Act 1984. Under clause 44, the regulator must establish and maintain a register of building inspectors (individuals) and building control approvers (either organisations or individuals). The Bill also removes the ability of dutyholders to choose their own building control body in respect of higher-risk buildings by mandating that only the regulator may be the building control authority for such work. It also provides that local authorities will be the default provider of building control work on out-of-scope buildings. Part 2 of the Building Act 1984 sets out the mechanism by which responsibility for providing building control services can transfer to approved inspectors.[158]

Removal of dutyholder choice of building control body in respect of higher-risk buildings

118. Currently anyone undertaking building work can choose their own building control body, be that a local authority or private building control body. The Hackitt report, though it welcomed this part-privatisation, concluded that client choice had resulted in conflicts of interest and "incentives for building control competitors to attract business by offering minimal interventions".[159] In line with its recommendation, the draft Bill removes dutyholder choice, though only in respect of higher-risk buildings, and thereby excludes private sector building control bodies from all in-scope building work.

119. The evidence conveyed great concern about the Bill's failure to remove dutyholder choice and competition entirely from the building control sector. Roy Wilsher, chair of the National Fire Chiefs' Council, told us: "We do not think people should be allowed to appoint their own inspector to sign off the work. We think it should be independent."[160] The LGA criticised the competition inherent in dutyholder choice, arguing that it "is only when regulators are uninhibited by competition that they can truly act as regulators", and was "disappointed" therefore that the Bill did not remove it entirely from the industry, as it would leave in place "one of the root causes of the current crisis".[161]

120. Local Authority Building Control welcomed the removal of competition from in-scope buildings but regretted that "'least intervention at the least price' will remain the culture for out of scope buildings" and claimed there was already evidence of increased competition for out-of-scope buildings.[162] Lorna Stimpson, its chief executive, told us in oral evidence that there "should not be a choice of regulator":

158 Building Act 1984
159 Independent Review of Building Regulations and Fire Safety: final report, 17 May 2018, page 41, para 2.41
160 Q8
161 LGA (BSB0062)
162 LABC (BSB0307)

> I believe that the construction industry as a whole has dictated to us over the last 30-odd years just how much regulation it is prepared to pay for. We have become a commodity, and that cannot continue. We are providing inspection regimes based on how much they are prepared to pay us to do that inspection. That cannot be right, in terms of regulation.[163]

121. The evidence from approved inspectors was mixed. Steve Wood, CEO of the National House Building Council, the largest approved inspector in England and Wales, said the NHBC had "no problem" with the duty-holder not appointing the building control body,[164] though the NHBC's written submission argued against local authorities being the default building control authority for out-of-scope buildings.[165] On the other hand, the Association of Consultant Approved Inspectors, argued that "the removal of all choice and competition" would "only serve to stifle innovation and incremental improvements across the sector,[166] whilst, in a joint submission, Quadrant Building Control and Gateway Building Control said that "the removal of choice and competition for in-scope buildings will inevitably lead to a stagnation of standards through a lack of incentive for continual improvement".[167] On balance, whilst we understand this argument, we cannot ignore the financial interest that private building control bodies have in maintaining dutyholder choice.

122. **We are concerned that the Bill only removes dutyholder choice in respect of higher-risk buildings. As a result, the majority of building control work will remain exposed to the weaknesses and conflicts of interest identified by Dame Judith Hackitt. We see no good reason not to replace dutyholder choice with a system of independent appointment for all out-of-scope work.**

123. ***We recommend that dutyholder choice be removed entirely from the building control system and replaced by a system of independent appointment, and that this be made explicit either in the Bill or in secondary legislation to be published alongside it.***

Conflict of interest arising from the BSR's dual role

124. We also heard from private building control bodies about the conflict of interest arising from the regulator's role as both the regulator of the new building control regime and the building control authority for higher-risk buildings. Under the amendments introduced by clause 46, the regulator must obtain and consider the advice of a registered building inspector, possibly its own employee. That inspector will be regulated by the regulator under the amendments in clause 44. The NHBC told us that a "regulator should not be involved with the functional delivery of the service it is regulating",[168] whilst the Future of Building Control Working Group drew our attention "to the potential conflicts

163 Q102 [Lorna Stimpson]
164 Q104
165 National House Building Council (NHBC) (BSB0322)
166 Association of Consultant Approved Inspectors (BSB0059)
167 Quadrant Building Control (BSB0051); Gateway Building Control (BSB0052)
168 National House Building Council (NHBC) (BSB0322)

of interest where the BSR is acting as both the standard setting body and the building control authority" and requested that this "be acknowledged and clearly addressed in whatever structures and operations are taken forward to regulate performance."[169]

125. CICAIR, the official register of approved inspectors, and itself a member of the working group, also criticised the regulator's dual role in its own submission but was more explicit in calling for "an independent designated body responsible for registration and audit of all Building Control Bodies and individual Building Control professionals" to avoid any "potential suggestion of conflicts of interest". It was worried that the current proposal "could lead to the accusation of the regulator marking its own homework."[170] The Association of Consultant Approved Inspectors, also a member of the working group, in raising the same concern, asked how the performance of the regulator itself, in its capacity as a building control authority, would be monitored and assessed and thought that this raised questions of equity and accountability.[171]

126. In response to this criticism, Sarah Albon, chief executive of the HSE, told us in oral evidence that she understood the concern and stressed the importance of having "the right kinds of Chinese walls", but she insisted that fundamentally there was no serious conflict of interest:

> at the heart of what we are doing, we do not have a conflicting interest. We are interested in the safety of residents and the safety of these buildings. Whether we look at that through the lens of regulatory requirement or building control, for us it is all about trying to make sure the building is safe. We do not have any other competing commercial interests… We are not going to have any incentive, as the building control body, to give landlords an answer they might want to hear. Rather, it will all be about safety.[172]

127. A single statutory body having responsibility for potentially conflicting functions creates tensions, but there are models available for operational independence within a single body. For example, the Bank of England must maintain operational independence between its resolution functions for failing banks and supervisory function in relation to capital requirements.[173]

128. **We understand the concern from the private building control profession about the conflict of interest arising from the regulator's dual role as building control body for higher-risk buildings and regulator of the building control profession. While we recognise that starting afresh with this Bill would be time-consuming, this is an issue which needs to be addressed if there is to be public confidence in the new system.**

169 Future of Building Control Working Group (BSB0054). The group was established in February 2020, at the invitation of MHCLG, and included representatives from the Association of Consultant Approved Inspectors, Construction Industry Council, Construction Industry Council Approved Inspector Register, Chartered Association of Building Engineers, Chartered Institute of Building, Local Authority Building Control, National House Building Council, Royal Institution of Chartered Surveyors. Its report, Recommendations on the future regulation of the Building Control Sector and Profession in England, was published in July 2020.

170 Construction Industry Council Approved Inspectors Register (BSB0310). The submission from the Construction Industry Council, which operates CICAIR, made the same recommendation; Construction Industry Council (BSB0133)

171 Association of Consultant Approved Inspectors (BSB0059)

172 Q168

173 See section 30C of the Bank of England Act 1998, which requires the Bank to make arrangements, and issue a statement of those arrangements, to ensure operational independence of those functions in accordance with the relevant EU Regulations.

129. ***The Government should provide clear justification for combining in one body both regulation of the industry and decision-making in relation to higher-risk buildings. If this is desirable, there must be a clear statutory requirement that those involved in decision-making about individual cases of professional competence are wholly operationally independent of those involved in regulation of higher-risk buildings.***

Registration of building control professionals

130. There was concern, too, about the provisions in clause 44 for the audit and registration of building control professionals. As the explanatory notes make clear, these provisions will only apply to building control approvers; local authorities, as the default building control authorities in their areas, will be exempt, though the 1984 Act, as amended by clause 47, provides for a failing authority's duties to be transferred to another local authority.[174] The Royal Institution of Chartered Surveyors criticised this arrangement, which it described as a "two-tier system", and the "lack of audit function over local authority building control bodies", which "should be subject to the same audit regime as private sector building control."[175] We heard from Lorna Stimpson, however, that the majority of LABC teams are already externally audited by UKAS.[176]

131. **We understand the argument that local authority building control teams should be audited in the same way as registered building control approvers, and we are only partially convinced by the provisions allowing for the duties of a failing local authority to be transferred to another local authority. We think the Bill should make explicit provision for the regulator to monitor and assure the competency of local authority building control, perhaps by mandating UKAS accreditation for all LABC teams.**

132. ***We recommend that the Bill place an explicit duty on the regulator to monitor and assure the competence of local authority building control teams through provisions comparable to those for the registration of building control approvers, perhaps by mandating UKAS accreditation for all LABC teams.***

174 Explanatory Notes to the draft Building Safety Bill [Bill 264 (2019–21)-EN), para 397
175 Royal Institution of Chartered Surveyors (BSB0368)
176 Q108

4 Occupation

Accountable person

Background

133. The provisions in Part 4 of the draft Bill extend the dutyholder regime into the occupation phase of higher-risk buildings through the introduction of "accountable persons", who will be the dutyholders in occupation. Under clause 73, the accountable person is required to take "all reasonable steps" to prevent a "major incident" arising from a building safety risk. Under clause 74, the accountable person must prepare a report (a safety case report) on the building safety risks in their building.

Identifying the accountable person

134. Clause 61 defines "accountable person", by reference to a possessory legal title to, or repairing obligation in respect of, any part of the common parts of a building. As defined, the accountable person may be an individual, partnership or corporate body. It is clear, as subsection (6) acknowledges, that in some higher-risk buildings there will be more than one "accountable person". This rests awkwardly with the duties imposed throughout Part 4 on "*the* accountable person", and the emphasis Dame Judith placed, in her report, on having "a clear, identifiable dutyholder" (though she also acknowledged the possibility of multiple dutyholders).[177] Responsibility for repair of common parts will often be divorced from ownership of those parts, particularly in the case of leases in blocks in which there is a management company, a third party responsible under the lease for repairs. The Government takes a power, by subsection (6) to modify how Part 4 applies when there is more than one accountable person. But there are no draft regulations, so it is impossible to assess how this will work in practice. Working Group 8 told us that "additional guidance will still be required to ensure a clear AP arises in complex ownership structures".[178]

135. Sarah Albon of the HSE explained that the provision for there to be more than one accountable person is merely a reflection of existing legal complexity.[179] We were told nonetheless that it could contradict the recommendation in the Hackitt report for a whole-building approach to building safety. For Victoria Moffett, from the NHF, the point of "greatest concern" was how to deliver such an approach with more than one accountable person and hold them to account "on areas where they are not directly responsible". She said: "I do not think that has been entirely worked through yet."[180] Martin Boyd, chair of the Leasehold Knowledge Partnership, agreed that on complex sites with multiple accountable persons the "idea that you have one person sitting above that who is entirely responsible is rather difficult."[181]

136. **We are concerned at the lack of detail in the draft Bill, or any draft regulations, identifying how the accountable person regime will operate in the case of multiple and complex ownership structures and repairing obligations, particularly where there are**

177 See para 3.18. The definition goes further than Dame Judith's recommendation that the building owner or "superior landlord" (whoever is ultimately entitled when leases end) be accountable (para 3.14).
178 Working Group 8 of the Competence Steering Group (BSB0427)
179 Q186
180 Q121
181 Q122

multiple accountable persons. This is another aspect which is crucial to the operation of the scheme of the draft Bill yet remains unworked. It will need to be scrutinised closely when the Bill is introduced.

137. ***We recommend that the Bill provide for a general duty to co-operate on accountable persons in respect of buildings for which there are multiple accountable persons and that the Government publish statutory guidance alongside the Bill setting out the sorts of behaviours that would be expected under such a duty.***

Relationship between accountable person and responsible person (Fire Safety Order)

138. We heard significant concern about the tension between the draft Bill and the Regulatory Reform (Fire Safety) Order 2005, which provides for premises to have a responsible person. The responsible person[182] under the Order will not always be the same as the accountable person under the draft Bill but will doubtless sometimes coincide. The Order applies to a wider range of premises, but in a residential block only to the common parts. The responsible person is placed under a variety of duties in relation to fire risk, many of which are more detailed than under the draft Bill. Unlike the draft Bill, the Order deals only with fire risk and does not expressly provide for the recovery of the responsible person's costs.

139. To facilitate a whole-building approach to building safety, as recommended by the Hackitt report, clause 102 places a duty to co-operate on accountable persons and responsible persons. Despite this, some of the evidence still expressed concern about the relationship and possible overlap of responsibilities. Nottinghamshire Fire and Rescue felt that "the proposed definition of accountable person requires a more defined definition as currently this appears to overlap with … the responsible person".[183] Working Group 8, whilst welcoming the alignment with the Fire Safety Order, thought it would not "fully negate the potential for gaps, especially in mixed use and other complex ownership structures".[184] The London Fire Brigade acknowledged the provisions in clause 102 but remained concerned about the existence of two overlapping regimes and recommended a mechanism for appointing a lead dutyholder. It also observed, as did the National Housing Federation, that the provisions were at odds with the intent of the Order and the Hackitt review to simplify fire safety legislation.[185]

140. **We are concerned about how the relationship between accountable persons and responsible persons will work in practice and are disappointed the Government have not taken the opportunity to rationalise all aspects of building safety—at least as regards fire risk—within a single, consistent, piece of legislation.**

141. ***In the short term, we recommend that the Government publish statutory guidance alongside the Bill outlining how it expects accountable persons and responsible persons to co-operate in practice. In the long term, we recommend that the Government review the operation of the two regimes with a view to rationalising and simplifying the legislation.***

182 Broadly, employers, those in control of their own business premises, or premises owners.
183 Nottinghamshire Fire and Rescue Service (BSB0027)
184 Working Group 8 of the Competence Steering Group (BSB0427)
185 London Fire Brigade (BSB0270); National Housing Federation (BSB0418)

Residents as accountable persons

142. We heard repeated concerns about the application of the accountable person regime to buildings with ownership structures involving more than just freeholder and lessee, particular those managed by residential management or right-to-manage companies, or owned by commonhold companies. FirstPort, the property management company, told us that many of directors of these residential management companies (usually residents) "will lack the time, resource and expertise to carry out the role", and that a survey of RMCs in its portfolio had found that many would "be reluctant to stay in post and adopt such onerous personal liabilities should they find that the RMC is designated the accountable person."[186]

143. The same concern was echoed by the ARMA, which thought it likely that the "over emphasis on penalising the accountable person, which appears to be prevalent currently, will discourage leaseholders from volunteering to be directors", a view echoed in relation to commonhold.[187] As a partial remedy, it recommended that the Bill explicitly permit RMCs to appoint professional directors (currently many leases forbid the appointment of non-residents to serve as directors of RMCs) to assume the responsibilities of the accountable person, though it acknowledged that this would result in considerable extra costs.[188]

144. Even where lay directors are willing to assume the responsibilities of the accountable person, there remained concern that they would lack the time and expertise to understand and discharge them properly. To mitigate this problem, ARMA suggested that the building safety manager, who will be technically more competent than the accountable person, be given a duty, either in the Bill or secondary legislation, to check that the accountable person is aware of their responsibilities and to inform them of those responsibilities if they are not.[189] This seems both sensible and easily done.

145. **We believe that the Bill could easily mitigate the problem of some accountable persons lacking the time or expertise to understand their responsibilities adequately through the inclusion of a duty on the building safety manager to make accountable persons aware of their responsibilities under the Bill.**

146. ***We recommend that the Bill place a duty on the building safety manager to inform the accountable person of their responsibilities under the Bill.***

Duty to prevent a major incident (clause 73)

147. Giles Peaker told us that clause 73, which requires the accountable person to "take all reasonable steps" to prevent a major incident, lacked sufficient clarity. As he pointed out, clause 73(7) defines "major incident" as "an incident resulting in … a significant number of deaths, or … serious injury". He said that without a more precise definition it would not be sufficiently clear when the accountable person's duty in this clause wold be engaged.[190] The Specialist Engineering Contractors Group feared that the definition of

186 FIRSTPORT (BSB0042)
187 Mrs Ruth Bravery (BSB0024)
188 The Association of Residential Managing Agents Ltd (BSB0334)
189 The Association of Residential Managing Agents Ltd (BSB0334)
190 Mr Giles Peaker (BSB0298)

"major incident" set too high a threshold.[191] The London Fire Brigade, too, thought the definition too vague.[192] We note that the accountable person commits an offence if they breach this duty and it actually places one or more people at significant risk of death or serious injury.[193]

148. **We think that the duty on the accountable person to take all reasonable steps to prevent a major incident lacks clarity and that without statutory guidance, especially on the meaning of "all reasonable steps", the provisions will likely be a source of uncertainty and concern for those assuming the role of accountable person. We are also persuaded that the definition of "major incident" sets too high a threshold.**

149. ***We recommend that the Government publish with the Bill statutory guidance describing the kind of actions that accountable persons will have to take to comply with their duty to "take all reasonable steps" to avoid a "major incident". We also recommend that the definition of "major incident" be amended to include incidents that might reasonably foreseeably cause death or serious injury.***

The safety case report (clause 74)

150. Under clause 74, the accountable person will be required to prepare a safety case report for their building containing their assessment of the building safety risks in their building and the detail of any steps taken under the duty in clause 73 to prevent a major incident. According to Peter Baker, director of building safety and construction at the HSE, the safety case report will be critical to the management of high-risk buildings, not just a "regulatory hurdle".[194] There was some concern, however, that it could be a particularly onerous responsibility and that people needed more detail about precisely what information would be required. Victoria Moffett again:

> The building safety case, in particular, represents a significant amount of work. It is a perfect example of one of the things the Government could provide some interim direction on, such as what a safety case might look like, so that we can direct our resource to making those exist until the legislation passes, with the knowledge that the work we have been doing so far is accurate.

151. The Institute of Workplace and Facilities Management agreed that "change will be enabled and effected" only when the industry knows what the safety case report will look like and emphasised the importance of appropriate transition times, especially for complex legacy buildings, as did the British Property Federation.[195] We agree that the preparation of safety case reports could be a heavy obligation on accountable persons, although we were somewhat reassured by the evidence on this point from Sarah Albon, chief executive of the HSE, in which she indicated that the regulator would expect the reports to be compiled in tranches and prioritised according to a combination of risk factors, including the vulnerability of residents, the construction materials and building height.[196]

191 Specialist Engineering Contractors' (SEC) Group (BSB0281)
192 London Fire Brigade (BSB0270)
193 Clause 94
194 Q193
195 Institute of Workplace and Facilities Management (IWFM) (BSB0426); British Property Federation (BSB0358)
196 Ibid

152. **We agree that the safety case report is one of the most onerous responsibilities on the accountable person and that in order to prepare for implementation the industry will need to know what the safety case report will look like and what information it must contain.** ***We therefore recommend that the Government publish guidance alongside the Bill outlining what information safety case reports will be required to contain.***

Building Safety Manager

Role of the building safety manager

153. Clause 67 requires the accountable person to appoint a building safety manager for their building. As set out in the Bill, their principal duties will be to manage the building in accordance with the safety case report and to provide prescribed information to the regulator in accordance with the mandatory reporting requirements established in clause 78. According to the explanatory notes, the building safety manager could be an individual or an organisation. As we heard in evidence, the Bill, in establishing the role of building safety manager, creates an entirely new profession.[197]

154. We share the enthusiasm and ambition we heard for the principle of the building safety manager. Richard Silva, executive director of Long Harbour, told us that, with an appropriate focus on vocational training and academic excellence, it could be an aspirational role.[198] Dame Judith Hackitt agreed:

> There is quite an array of people who could aspire to those roles if we describe them appropriately, in a way that talks about what they are there to achieve rather than talking about the negatives that might be associated and asking, "Who would want to do this job?" Actually, I think there are quite a few people out there who would want to do this job because it is important and we should talk about that more.[199]

Competence framework

155. Despite this, however, we heard concerns about the role of the building safety manager that went to the heart of the new building safety regime. The most serious were around publication of the competence framework and the availability of competent persons to fill the role. Sir Ken Knight, from the Building Safety Independent Expert Advisory Panel, described the role as "pivotal" and said that "to get people in the time period between now and enactment of the role of the building safety regulator" the industry needed to know "what competencies are required and, undoubtedly, what training and assurance those people need to take up those roles.[200] G15 said that "greater visibility of the competencies" would be "essential" if building owners were "to ensure their employees are trained,

197 Q40, Q125
198 Ibid
199 Q212
200 Q19

competent and adequately supported."[201] The National Housing Federation said it would be impossible to "assess demand versus existing supply for personnel with the requisite skills, knowledge and experience until competence requirements are clarified".[202]

156. We accept the argument that without sight of the competence framework the industry cannot begin to plan properly for the new regime. We note, however, as did much of the evidence, that the Department established an expert panel, known as Working Group 8, to develop the competence framework for building safety managers and that that this group published its final report, *Safer people, safer homes: Building Safety Management*, near the end of our inquiry, on 5 October.[203] The Government has not yet indicated, however, whether it intends to adopt its proposals.

157. There was support for the policy intention, set out in the explanatory notes, that the building safety manager could be an organisation as well as an individual.[204] Victoria Moffett, from the National Housing Federation, said the "idea that those skills might exist in one person seems like quite a tall order, so we have been pleased to see that the Bill would permit a building safety manager to be an organisational role".[205] Others were concerned, however, that most accountable persons, even where they were management companies, would not have the necessary resources to perform this function themselves. Dr Nigel Glen, CEO of the ARMA, told us that whilst some of the larger managing agents would be able to develop in-house BMS capability, most would have to contract it in. On the availability of competent persons, he said: "That is a point of great concern. You introduce legislation that requires us to employ people who do not exist, so what do we do?"[206]

158. **We agree that the role of building safety manager and the supply of adequately skilled individuals to fill the role will be critical to the success of the new building safety regime for higher-risk buildings. We also agree that without sight of the competence framework the industry cannot begin to recruit and train individuals to fill the role and that unless the Government publishes the competence framework soon the implementation of these provisions will be seriously impeded.**

159. ***The Government must announce before the Bill is published whether it intends to adopt the competency framework for the role of building safety manager proposed in the report from Working Group 8. If it does not, it must publish with the Bill the full details of the framework it does intend to adopt.***

Accreditation and registration

160. We heard strong support for industry-led qualification and accreditation schemes for prospective building safety managers and for a central register of competent people, held either by the regulator or an industry body, to give accountable persons and the regulator

201 G15 (BSB0071)
202 National Housing Federation (BSB0418); among many others, the following also made this point: London Councils (BSB0208); FIRSTPORT (BSB0042); Institute of Residential Property Management (BSB0401)
203 Working Group 8, Safer people, safer homes: Building Safety Management, October 2020
204 Explanatory Notes to the draft Building Safety Bill [Bill 264 (2019–21)-EN), para 65
205 Q124
206 Q154

confidence in a person's ability to undertake the role.[207] We were told that accreditation would be essential to training and upskilling professionals in the sector and that it should be done to common standards. In that regard, we heard helpful evidence from the BSI about the built environment competence standards it was developing in consultation with the sector.[208] Some of the evidence expressed support for the adoption of these standards.

161. There was as much support for a central register, which ARMA said would be a "single source of truth" giving accountable persons, residents and the public greater confidence in the competence of building safety managers,[209] although there was some disagreement about who should hold it. Working Group 8 said it could be held by industry representatives, professional bodies or the regulator, but the Institute of Workplace and Facilities Management thought it should be industry-led. Either way, Working Group 8 urged that it be given a statutory footing, either in legislation or in statutory guidance.[210]

162. **We think that a national system of accreditation and registration for building safety managers will be critical if stakeholders, particularly accountable persons, are to have confidence in the competence of persons undertaking that role, and that any accreditation should be done to agreed common standards.**

163. ***We recommend that the Government provide, either in legislation or in statutory guidance, for a national system of accreditation to agreed common standards and for a central register of building safety managers.***

Access to professional indemnity insurance (building safety manager)

164. As with dutyholders in design and construction, we heard particular concern that building safety managers could find it difficult to access professional indemnity insurance. The British Property Federation told us that "a significant concern for a variety of stakeholders" was "the ability of new role holders to obtain professional indemnity insurance for their new roles" and that "the breadth of the responsibilities of Building Safety Managers may make it difficult for them to obtain viable PI."[211] Graham Watts, from the CIC, said he was "particularly concerned about the building safety manager role" as there was "no product for that at the moment with which we can make sure that these roles are insured".[212] The Institute of Facilities and Workplace Management told us there were "concerns around the potential lack of future BSMs linked to the issue of professional indemnity" and that given "the duties and responsibilities linked to the BSM role, liability for the role is going to have to be paid for."[213]

207 For standards and accreditation, see: Chartered Institute of Building (BSB0335); The Association of Residential Managing Agents Ltd (BSB0334); British Standards Institution (BSI) (BSB0429). For a central register, see: Working Group 8 of the Competence Steering Group (BSB0427); Institute of Workplace and Facilities Management (IWFM) (BSB0426); The Association of Residential Managing Agents Ltd (BSB0334)

208 Working Group 8 of the Competence Steering Group (BSB0427); Institute of Workplace and Facilities Management (IWFM) (BSB0426); British Standards Institution (BSI) (BSB0429). The BSI's draft standards, which cover individuals working on higher-risk buildings from design and construction through to occupation, can be found here: Built environment – Overarching framework for competence of individuals – Specification

209 The Association of Residential Managing Agents Ltd (BSB0334)

210 Institute of Workplace and Facilities Management (IWFM) (BSB0426); Working Group 8 of the Competence Steering Group (BSB0427)

211 British Property Federation (BSB0358)

212 Q47

213 Institute of Workplace and Facilities Management (IWFM) (BSB0426)

165. We believe that access to professional indemnity insurance during the occupation phase is a problem mainly likely to affect building safety managers, rather than accountable persons. In most cases, freehold owners and management companies will have no choice about becoming an accountable person; it will be a result of their position set by property law. Directors of a leasehold management company could be liable (under clause 114) if they consent to or connive in an offence, or their negligence causes the offence, which might deter leaseholders from volunteering as directors of a residential management company,[214] but there are often legal barriers to insuring against criminal liability (which would also render any deterrent effect nugatory), so it is not clear that professional indemnity insurance would help. Building safety managers, on the other hand, might face (at the very least) contractual liability to the accountable person appointing them.

166. **We agree that building safety managers could well struggle to access professional indemnity insurance and that the Government must work with the industry to facilitate the design of appropriate products. We also think that early sight of the competence framework and precise responsibilities of building safety managers could help to alleviate concern in the industry and facilitate the development of appropriate insurance products.**

167. ***We recommend that the Government work with the insurance industry to facilitate the development of appropriate professional indemnity insurance products for building safety managers. In particular, we again recommend that the Government publish the competence framework and the precise responsibilities of the building safety manager.***

Sanctions regime for accountable persons and building safety managers

168. The Bill establishes a sanctions regime for accountable persons and building safety managers and makes the regulator responsible for enforcement through the issuing of compliance notices. Under clause 91, an accountable person or building safety manager who, without reasonable excuse, breaches a compliance notice is liable to a fine and/or up to two years' imprisonment. By clause 94, if an accountable person fails without reasonable excuse to comply with a requirement[215] under Part 4 and this places one or more people at significant risk of death or serious injury, they commit an offence attracting the same range of sentence.

169. We heard relatively little criticism of the sanctions regime for accountable persons and building safety managers, though Swish Residents' Association thought the proposed penalties "wholly inadequate" and that they failed "to send the right message."[216] The LGA, whilst welcoming the sanctions, noted that they only applied to higher-risk buildings and recommended that a similar regime somehow be extended to all buildings.[217] Martin Boyd drew a distinction between the construction industry, where most problems are to be found, and the occupation phase, for which there is "no clear evidence of defective behaviour". Consequently, he wondered why the sanctions regime in occupation was as severe as that for design and construction.[218]

214 See above, para 170
215 Other than one prescribed for the purpose of the clause
216 The Swish Residents Association (BSB0011)
217 LGA (BSB0062)
218 Q126

170. The only other concern we heard touching on the sanctions regime was about lack of clarity around the respective responsibilities and liabilities of accountable persons and building safety managers. Submissions from the insurance industry, in particular, told us that the lack of detail in the Bill risked causing confusion. Others, including the Institute of Workplace and Facilities Management and Working Group 8, agreed about the potential confusion and told us that whilst the explanatory notes were clear that the building safety manager would assume responsibility for the day-to-day management of building safety risks, the Bill itself was less precise.[219]

171. **We agree that the lack of clarity in the Bill around the respective responsibilities, and therefore liabilities, of the accountable person and building safety manager could cause confusion and concern, especially where non-compliance could result in criminal sanction.**

172. ***We recommend that the Government publish statutory guidance alongside the Bill outlining the respective responsibilities of accountable persons and building safety managers.***

Residents

Resident engagement

173. The Hackitt report found that many residents did not feel consulted on changes to their building that could affect its safety and concluded that "the more that residents are informed about the fire safety strategy for the building, the better they will be able to play an active and informed role in helping to ensure that it remains safe, and the more they will in turn feel safe in their homes."[220]

174. In recognition of these findings, the draft Bill contains provisions to facilitate resident engagement, principally through the requirement on the accountable person, under clause 82, to prepare a resident engagement strategy and to give each resident a copy with a view to promoting their engagement in building safety decisions. Clause 60 defines a "resident" of a dwelling in a higher-risk building as "a person who lawfully resides there", though subsection (5)(b) provides that the Secretary of State may amend the definition in regulations. Under clause 82(6), the duty to give a copy of the strategy to a resident does not apply "if the accountable person is not aware of the resident and has taken all reasonable steps to make themselves aware of residents of the building."

175. Some evidence criticised the definition of resident. Working Group 8 argued that it should "cover all 'occupiers' beyond those classed as resident"[221] and Victoria Moffett was worried that the definition of resident would exclude people renting out a property from the provisions on engagement with the accountable person.[222] On the first concern, the Bill, as noted, defines "resident" as "a person who lawfully resides there". While this may be a natural definition of "resident", we do wonder whether it might leave room for argument as the scope of "higher-risk building" expands. Working Group 8 did not

219 Zurich Insurance (BSB0422); International Underwriting Association (BSB0323); Working Group 8 of the Competence Steering Group (BSB0427); Institute of Workplace and Facilities Management (IWFM) (BSB0426)
220 Independent Review of Building Regulations and Fire Safety: final report, 17 May 2018, p 58, para 3.42
221 Working Group 8 of the Competence Steering Group (BSB0427)
222 Q129

elaborate on its criticism but we would welcome an explanation from the Government as to why "residence" was chosen over "occupation". On the second concern, the relevant provisions all specify that not only residents but "owners of flats" should be the subject of engagement. For example, clause 82, on the residents' engagement strategy, places a duty on the accountable person to promote the participation of "relevant persons" in the "making of building safety decisions. Subsection (8) then defines relevant person as "residents" and "owners of flats". It seems clear to us, therefore, that the Bill explicitly includes owners within the resident engagement provisions.

176. We heard concern that accountable persons would be unable to identify all the residents in their building. Martin Boyd called it "utterly, utterly impossible".[223] Victoria Moffett agreed it would be very difficult.[224] This gives rise to two concerns. The first is whether the Bill places too onerous a duty on the accountable person to identify residents in their building. On this point, we are satisfied that it does not, since, as noted, clause 82(6) provides that they need only take all reasonable steps to identify residents. The second concern is whether such a limited responsibility will encourage the engagement of hard-to-reach residents. The IRPM told us that the duty to engage residents in decision making would likely be too great for many accountable persons, especially where they are directors of RMCs, and that in practice it would probably not get done. The LKP, which criticised the "arrogance" of what it called this "top-down approach", suggested that the Bill require a residents group to be formed in every building and that such groups be required to represent every subgroup of resident within that building.[225]

177. **We are concerned that resident engagement provisions could be too onerous a responsibility on accountable persons and that in many cases it would be done inadequately or not at all. We also agree that the Bill establishes a top-down model of engagement and that the formation of resident groups could both empower residents and lighten the responsibility on accountable persons.**

178. ***We recommend that the Government consider facilitating, possibly in the Bill itself, the formation of resident groups in every higher-risk building and that these groups be required to include representatives of every type of resident in the building.***

Access to dwellings

179. Access to dwellings was a "key concern" for London Councils. It told us that the BSM and accountable person would "not be able to holistically manage a building without robust powers to enter, inspect, and enforce action where appropriate" and that although this was addressed for "immediate safety concerns", the ability to manage the safety of an entire building required "powers to enter and install fire safety improvements across all of a block's homes".

180. London Councils referred to a recent case in the High Court in which the Council was held not to have a right to access a leaseholder's property to make fire safety improvements.[226] This was a case concerned with the specific terms of a shared ownership lease, and it was held there was no general right to enter to avoid the risk of death or personal injury.

223 Q128
224 Q129
225 Leasehold Knowledge Partnership (BSB0255)
226 London Councils (BSB0208). The case is *Piechnik v Oxford City Council* [2020] EWHC 960 (QB)

181. Clause 87 provides the courts with power to order a resident (regardless of tenure) to give access to "facilitate the performance by the accountable person" of their duties under clauses 72 (assessment of risks) or 73 (all reasonable steps to prevent a major incident or reduce severity). We do not see that the clause is restricted to "immediate safety concerns": any reasonable step to prevent a major incident or reduce its severity would be covered and it seems unlikely the courts would stand in the way of any fire safety improvements in this regard.

182. Cambridge City Council told us experience suggested the practicalities of obtaining access even by serving a notice "may be difficult".[227] We understand that the power to order a resident to give access is likely to fall short of allowing the use of force, that County Courts often struggle with this question when landlords apply for injunctions for access to inspect gas installations.[228] If a resident failed to comply with an order under clause 87 we understand enforcement would be by applying for their committal and possible imprisonment. The rights of residents to respect for their homes under Article 8 of the European Convention of Human Rights would clearly be engaged, and the Government would have to consider whether the use of force was a proportionate means of pursuing a legitimate aim.

183. **We think the power in clause 87 to order residents to give access is wide enough to cover the risks within the scope of Part 4, and the duties of an accountable person under clauses 72 and 73.**

184. ***We would encourage the Government to consider making it clear on the face of the Bill whether the power in clause 87 includes authorising the use of force but express no view on the conclusion to be reached.***

Electrical safety in occupation

185. We received several submissions expressing concern about the lack of specific reference in the draft Bill to electrical safety. Organisations such as Electrical Safety First and Certsure argued that the accountable person should be given a specific duty to ensure the safety of electrical installations in their building.[229] We do not see how this could sensibly be done other than by amending the definition of "building safety risk" in clause 16 to explicitly cover electrical failure, but as we note in paragraph 70 we think that electrical failure is already implied in the current definition and therefore that the accountable person already has duty to prevent a major incident arising from electrical failure. As recognised in clause 86, responsibility more generally for ensuring the safety of electrical items in private dwellings lies principally with residents, though subsection (2) rightly gives the accountable person the power to enforce that duty where necessary. We think it would place too great a responsibility on the accountable person were the Bill to provide for any further explicit duty in this regard.

186. We also heard that the Bill was an opportunity to address electrical safety in higher-risk buildings more generally. In particular, some, such as ECA, Electrical Safety First and Certsure, argued for mandatory five-yearly electrical safety checks in all high-risk

227 Cambridge City Council / 3C Building Control (BSB0348)

228 See Devonshires Solicitors Housing Management Brief, "Gas Safety Access Injunctions - Forced Access" (2013), accessed 5 November 2020

229 Electrical Safety First (BSB0053); Certsure (BSB0328)

residential buildings, perhaps through the extension of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020. We think this is a sensible suggestion.

187. **We agree that electrical safety should be an integral part of the building safety system and that the Bill is an opportunity to require regular electrical safety checks in higher-risk buildings. We are clear, however, that no further specific duties should be placed on the accountable person with regard to electrical appliances, as their existing duties are already extremely onerous, although they should be required through the engagement strategy provisions to inform residents of their duties under clause 86 and to provide guidance to facilitate their compliance with those duties.**

188. ***We recommend that the Government include supplementary provisions in the Bill for mandating regular electrical safety checks in higher-risk buildings.***

5 Construction Products and Supplementary Provisions

Construction products (clause 110 and Schedule 8)

189. The current regime for regulating construction products only covers products with European harmonised standards (hENs) or European technical assessments (ETAs). As a result, certain safety-critical products, such as aluminium composite material (ACM) cladding, are not regulated. The main purpose of clause 110 and schedule 8 is to expand the scope of the regime to include other "safety-critical products". It does this by conferring powers on the Secretary of State to regulate the marketing and supply of construction products that fall into one of three categories: those with designated standards; those deemed to be "safety-critical"; and those not deemed to be "safe products". Under schedule 8, a product can be deemed "safety-critical" if, in the view of the Secretary of State, any failure of the product would risk causing death or serious injury to any person; and a product can be considered a "safe product" if, under normal conditions of use, it presents no or very little risk to health or safety.

Product testing

190. The Hackitt report concluded that "the product testing, labelling and marketing regime" was "opaque and insufficient" and recommended the development of a "clearer, more transparent and more effective specification and testing regime of construction products".[230] We also heard criticism of the lack of transparency and rigour in the current testing regime from Dr Debbie Smith, of BRE Global, the independent testing and certification body.[231] We find it surprising, therefore, that the Bill, as noted in the evidence, makes no mention of the future testing regime.[232] AXA UK, noting its absence from the Bill, said it would "welcome further clarity on product testing in the regulatory framework and a commitment from Government to improve product testing across the built environment".[233] We note, however, that the HSE told us in its written submission that product testing was one of the main outstanding issues still under discussion.[234]

191. **We strongly agree that there is insufficient clarity around the future product testing regime, although we acknowledge that discussions on the detail are ongoing. *We recommend that the Government publish with the Bill its proposals for improving the product testing regime.***

Third-party certification

192. In a previous report, we recommended that the testing regime "be more transparent, with details of test failures and re-run tests made publicly available",[235] and this conclusion accords with the findings of the Hackitt report. On the question of whether test results

230 Independent Review of Building Regulations and Fire Safety: final report, 17 May 2018, pp 11 and 94
231 Q68
232 Fire Sector Federation (BSB0390); AXA UK (BSB0280)
233 AXA UK (BSB0280)
234 Health and Safety Executive (BSB0424)
235 Housing, Communities and Local Government Committee, Independent review of building regulations and fire safety: next steps

should be made public, however, Peter Caplehorn, CEO of the Construction Products Association, said it would be "quite a challenge" as the results had "commercial value".[236] On the other hand, we heard support for third-party certification as a means of improving transparency, including from the Mineral Products Association and the Insulation Manufacturers Association. The former said it should be "a central part of the product testing regime".[237] Dr Smith told us that a "national-level third-party certification scheme" could address many of the flaws in the current regime, including the lack of transparency and the inability of customers to verify marketing claims.[238]

193. Unsurprisingly, the United Kingdom Accreditation Service, the national accreditation body, also argued for third-party certification and urged the Government to use "existing frameworks to provide this oversight", such as the "accreditation and accredited certification to agreed international registration (as provided by UKAS)". It said that "the mechanisms to deliver this oversight already exist" and that there was "no need to 'reinvent the wheel'", and added that missing from the proposals was "a sufficiently robust regulatory regime, which ensures that these mechanisms are deployed correctly, consistently and comprehensively."[239]

194. **We are not persuaded that third-party certification alone would provide the transparency and accountability that we and the Hackitt report have previously recommended and still believe that details of test failures and re-run tests should also be made publicly available.**

195. ***We recommend that the Government provide for the publication of test failures and re-run tests and for the establishment of an independent and unified system of third-party certification in order to introduce greater transparency and rigour into the regulation of construction products.***

Product testing (capacity and resources)

196. Several organisations, including the LGA, told us that the Bill did nothing to address the lack of resources and testing capacity in the UK and that this could impede the roll-out of any new testing regime.[240] The Insulation Manufacturers Association warned that "the capacity for testing construction products with accredited laboratories in the UK is already stretched" and that "before introducing more testing regimes the government will need to be sure that testing capability is ramped up".[241]

197. ***We recommend that the Government establish the capacity of the testing market in the UK and, if necessary, provide the necessary funding to increase that capacity so as not to hinder the implementation of the new product testing regime.***

Product testing (combination of products)

198. We heard also that schedule 8 failed to treat products as parts of systems, including from the HSE, which said it was one of the remaining challenges in this area still under

236 Q70
237 Mineral Products Association (BSB0082); Insulation Manufacturers Association (BSB0259)
238 Q68
239 United Kingdom Accreditation Service (BSB0267)
240 LGA (BSB0062)
241 Insulation Manufacturers Association (BSB0259)

consideration.[242] The CPA noted "great concern from many quarters that the Bill is angled towards individual products and that systems are ignored".[243] EPIC told us that "the stand-alone performance of individual products is just one aspect of building safety" and that much depended on "the design, configuration and interaction with other elements of the construction, including which other materials are being used." It said it was "crucial to take a holistic view of the building envelope rather than an over-simplistic view of individual components" and that "system testing is a much more reliable indication of the performance of a construction and the various products it is made up of."[244]

199. Similarly, Kingspan explained that many products "are utilised in systems/assemblies/kits in conjunction with various other products" and that the "best approach to assessing suitability and safety of systems of products is for them to be treated not in isolation, but as an assembly of building products."[245] The joint submission from three roofing trade associations helpfully illustrated how this point with reference to their industry.[246] In making the same criticism, the NHBC cited the example of fire doors, for which components are tested together but then procured individually, and where the substitution or changes to individual parts to compromise overall performance. It recommended that product certification include information about how the product performs when combined with other products.[247]

200. **We are persuaded that schedule 8 fails to treat products as parts of systems, though we recognise that discussions on this point are ongoing. The future testing regime must assess a product's performance in combination with other products as well as in isolation.**

201. ***We recommend that the Government make provision, either in the Bill or in secondary legislation, for a testing regime that treats products as parts of systems, perhaps by mandating the provision of a certificate confirming how the product performs when combined with other products.***

Definition of "safety-critical" products: field of application and product families

202. One of the most common criticisms of schedule 8 was that the definition of "safety-critical product" failed to consider a product's application. The Phenolic Foam Manufacturers' Association told us that a product could only be considered "safety critical" based on its application, that a single product may have more than one application, and that it might be safety critical in one scenario but not in the other.[248] As the British Cables Association pointed out, cables are an example of such a product: they could not normally be considered safety critical except where used for "specific life-safety purposes in buildings, for example in fire detection & alarm systems, in emergency lighting systems, and for providing power and control for fire-fighting equipment". It argued that depending on use cables ought to be caught by the provisions either for general safety

242 Health and Safety Executive (BSB0424)
243 Construction Products Association (BSB0065)
244 Engineered Panels in Construction (trading as EPIC) (BSB0301)
245 Kingspan (BSB0277)
246 Single Ply Roofing Association (SPRA), Liquid Roofing and Waterproofing Association (LRWA), National Federation of Roofing Contractors (BSB0132)
247 National House Building Council (NHBC) (BSB0322)
248 Phenolic Foam Manufacturers' Association (PFMA) (BSB0333)

requirements or for safety critical products.[249] Similarly, we heard from Dr Debbie Smith, from BRE Global, about the importance of a product's "field of application" to any testing and safety regime.[250]

203. Several submissions from industry bodies were worried by the apparent intention to classify safety-critical products according to product family. EPIC recognised that the intention was "to make the list manageable" but wondered what the criteria wold be to establish whether or not a product or product family is safety critical."[251] The Phenolic Foam Manufacturers' Association thought that basing the safety-critical list around product families rather than individual products from specific manufacturers could complicate the regime as a "product family could be fairly generic in description",[252] whilst the Association for Specialist Fire Protection said that "all products within a product family should be tested, assessed and certified based upon individual tests of products and systems" and that it "should not be the situation that one manufacturer tests, and others can gain entrance into the market based upon that test."[253]

204. **The construction products regulatory regime envisaged in the Bill and accompanying documents fails to recognise that a single product may have more than one application and that it might be considered safety critical in one application but not in another. Further, this weakness in the regime could be exacerbated by the apparent intention to designate product families, rather than individual products, as safety critical.**

205. ***We recommend that the Government set out, either in the Bill or in secondary legislation to be published alongside it, how the regime will certify individual products, as opposed to product families, and take account of products with more than one application.***

Designation of European technical assessments

206. In describing the standards to be designated as UK standards under schedule 8, the Department is clear that products with European technical assessments, as well as those with EU harmonised standards, will be caught within the new regulatory regime.[254] Schedule 8 itself, however, mentions only "EU harmonised standards" and "other overseas standards". This appears to have caused some confusion and concern in the industry, with many organisations, including the Association for Specialist Fire Protection, the Construction Products Association and EPIC, under the impression that products with European technical assessments will not be caught by Schedule 8.[255]

249 British Cables Association (BSB0276)
250 Q60
251 Engineered Panels in Construction (trading as EPIC) (BSB0301). According to its submission, this intention was set out in a briefing given by MHCLG to the Construction Products Association.
252 Phenolic Foam Manufacturers' Association (PFMA) (BSB0333)
253 Association for Specialist Fire Protection (BSB0272)
254 Explanatory Notes to the draft Building Safety Bill [CM 264 (2019–21) -EN], paras 791–99
255 Construction Products Association (BSB0065); Association for Specialist Fire Protection (BSB0272); Engineered Panels in Construction (trading as EPIC) (BSB0301)

207. **It seems obvious that the provisions in Schedule 8 for the designation of European standards are intended to cover products with European technical assessments. It is less obvious why schedule 8 refers only to "other overseas standards". We understand why it has caused confusion in the industry, although we accept that there might be a good reason for the drafting.**

208. ***We recommend that the Government make clear that the schedule as worded will cover such products or amend it so that it does.***

Designation of European harmonised standards

209. One of the most controversial elements of the new regulatory regime for construction products concerned the designation of hENs. Some in the industry wanted all hENs to be designated as UK designated standards. ROCKWOOL said it "firmly believes that British standards should mirror European product standards" in order to "reduce complexity, ensure continuity of standards and building safety practices, and prevent any misinterpretation of standards or friction in the cross-border manufacture, supply, or implementation of safe building materials." On the other hand, the Mineral Products Association criticised the proposed regime for being too reliant on hENs and asked that provision be made for reviewing all hENs and commissioning new standards where these are found to be inadequate.[256] Both agreed, however, that the Government needed to indicate its intention regarding the designation of hENs as soon as possible.

210. **We cannot judge the adequacy of European harmonised standards, but we agree with the industry that the Government should indicate soon whether it has any plans to review hENs and commission new standards. *The Government should indicate whether or how quickly it intends to review existing European harmonised standards.***

Miscellaneous provisions

Removal of the democratic filter.

211. The Bill provides for social housing residents to immediately escalate a complaint to the House Ombudsman, once they have exhausted the landlord's complaints procedure, by removing the existing requirement (the democratic filter) that they make that complaint through a designated person, such as an MP or councillor, or wait until eight weeks after the completion of the landlord's complaints procedure. The few submissions that mentioned the removal of the democratic filter all welcomed it without qualification.[257]

New Homes Ombudsman

212. The Bill also provides for "relevant owners" of new build homes to escalate complaints to a new homes ombudsman and for a power to require developers to become members of the scheme and for sanctions where they breach its requirements. Under clause 106(7), a "relevant owner" is an individual with a legal interest in land that includes the home,

256 Mineral Products Association (BSB0082)

257 London Fire Brigade (BSB0270); National Fire Chiefs Council (BSB0304); London Councils (BSB0208)

though clause 106(4) also provides a power for the scheme to permit persons other than the "relevant owner" to make a complaint. Under clause 107, a "developer" is anyone who undertakes the construction or conversion of homes with a view to selling them.

213. We received mostly very positive submissions on the introduction of the new homes ombudsman scheme, including from the Leasehold Advisory Service, UK Finance, the Law Society and the Construction Industry Council,[258] though we did receive some representations on the definition of "developer". The Property Ombudsman suggested that the definition of "developer" be amended to include self-build developers who sell within two years and freeholders and management companies who manage communal spaces within developments, such as recreational areas.[259] Propertymark made the same point about freeholders and managing companies.[260] Similarly, the Federation of Master Builders asked that the definition of "developer" be expanded to include contractors and special purpose vehicles set up to oversee a development and then wound up once the building works have been completed and the properties sold.[261]

214. The Property Ombudsman asked that under clause 106(4) prospective buyers who have to pull out of a purchase because the developer fails, for example, to provide accurate or timely information, and who consequently lose money, also be permitted to make a complaint.[262] Homes for Scotland, a property developer, criticised clause 106(4), however, as it failed to see who else could have reason to bring a complaint, and it asked for this to be clarified.[263] Similarly, on the definition of "relevant owner", the Law Society of Scotland asked that the definition be extended to include spouses/civil partners who occupy the new build property but do not hold a title interest and to beneficiaries under a trust where, for example, a trustee purchasing a property for a disabled individual.[264]

215. **On balance, we are broadly satisfied with the scope of the new homes ombudsman and with the definition of terms establishing that scope, though we think that the Government should include among those permitted to make a complaint prospective buyers who are forced to pull out of a purchaser owing to the actions of the developer.**

216. ***We recommend that the Bill include among those permitted to make a complaint to the new homes ombudsman prospective buyers who are forced to pull out of a purchase owing to any behaviour by the developer that is itself grounds for a complaint. We also recommend that the Bill require developers to establish their own complaints procedures and to inform purchasers of their rights under the new homes ombudsman. Finally, we recommend that the Government monitor the performance of the scheme and amend its scope if necessary.***

258 Leasehold Advisory Service (BSB0305); UK Finance (BSB0256); Law Society (BSB0408); Construction Industry Council (BSB0133)
259 The Property Ombudsman (BSB0273)
260 Propertymark (BSB0295)
261 Federation of Master Builders (BSB0321)
262 The Property Ombudsman (BSB0273)
263 Homes for Scotland (BSB0331)
264 Law Society of Scotland (BSB0284)

Architects

217. Clause 111 provides for disciplinary orders made against architects by the Professional Conduct Committee of the Architect Registration Board, the statutory regulator of architects, to be listed alongside their entry in the register of architects, and for the Board to monitor the competence and continuing professional development of architects and to remove those who do not meet the competence requirements.

218. We received very little evidence on the clause 111, although Adrian Dobson from RIBA said it "makes sense" to place a duty on architects to demonstrate competence, as this removed a complex and costly disciplinary process. Graham Watts from the Construction Industry Council agreed that the measure was a "good thing".[265] Like the evidence, we believe that these provisions are uncontentious, straightforward and very welcome.

265 Q54

Conclusions and recommendations

Introduction

1. We warmly welcome the policy intent behind the draft Bill and believe it to be a crucial step towards remedying the flaws in the building safety regime identified in the Hackitt report. Nonetheless, whilst recognising that it provides the framework for the new regulatory regime and must necessarily lack certain details, we agree that it relies very heavily on secondary legislation and that the absence of detail greatly impeded the process of pre-legislative scrutiny. (Paragraph 14)

2. *We urge the Government to include as much detail in the Bill itself or to publish the secondary legislation alongside it. It is especially important that this be done for core provisions such as the Gateways process and the regulation of construction products.* (Paragraph 15)

3. *Moreover, any powers in the Bill to amend primary legislation should be included only where fully justified and necessary to implement the framework set up by the Bill. They should be limited to the minimum needed to make this new policy work rather than accommodate all future policy change. For example, if primary legislation might stand in the way of some future exercise of the power to make construction product regulations, it could be expressly amended or repealed now rather than swept away by Government under paragraph 16(1)(c) of Schedule 8.* (Paragraph 16)

4. We agree completely that those being given additional and sometimes onerous responsibilities under the Bill cannot reasonably be expected to implement its provisions and move to full compliance without sufficient and clearly described transition periods. (Paragraph 19)

5. *We recommend that the Government publish with the Bill a clear timetable for commencement so it is clear by when the industry has to demonstrate compliance and the Building Safety Regulator establish the regime.* (Paragraph 20)

Leaseholders and the building safety charge

6. We continue to believe that residents should not bear any of the costs of remediating historical building safety defects and are deeply concerned by the Government's failure to protect them from these costs. We are especially disturbed by its commitment to protecting them only from "unaffordable costs". It would be unacceptable and an abdication of responsibility to make them contribute a single penny towards the cost of remediating defects for which they were not responsible. (Paragraph 31)

7. *The Government must recommit to the principle that leaseholders should not pay anything towards the cost of remediating historical building safety defects, and, in order to provide leaseholders with the peace of mind they deserve, amend the Bill to explicitly exclude historical costs from the building safety charge.* (Paragraph 32)

8. It seems self-evident that responsibility for funding remediation works lies jointly with the industry and the Government. Whilst we welcome the assurances that

the Government is looking at potential financing options for recovering costs, in the short term we see no alternative to the Government itself, and therefore the taxpayer, footing much of the bill. We can think of no other means by which the necessary works can be carried out quickly enough. (Paragraph 38)

9. *The Government must announce, before they publish the Bill, its proposals for funding all historical building safety remediation works. These proposals should impose no costs on leaseholders and explicitly acknowledge that in the short term the Government must foot the bill, until such time as mechanisms for cost recovery have been developed. We also urge the Government to explore the options for reform of the law preventing building owners with no contractual remedy claiming against developers for defective construction more than 6 years old which has not caused damage. The New South Wales legislation offers a possible model.* (Paragraph 39)

10. The requirement to pay the building safety charge within 28 days of demand and the lack of effective consultation protection simply compound the unfairness, and potentially catastrophic consequences, of allowing leaseholders to be charged the cost of remedying historic defects. The 28-day deadline seems particularly unreasonable. (Paragraph 42)

11. *If the Government does not adopt our recommendation to protect leaseholders from all historic costs, we ask at the very least that it give them significantly longer than 28 days to pay the building safety charge and amend the provisions to make it clear that the consultation requirements should be dispensed with only in exceptional circumstances, even in the case of building safety works.* (Paragraph 43)

12. We do not think it necessary to establish the building safety charge separate from the service charge. Aside from the unnecessary additional bureaucracy and administration costs, a separate charge means additional, separate, bills for leaseholders at intervals and within periods which may differ from those in their leases. The same benefits of transparency (the Government's justification for a separate charge) can be achieved by implementing our previous recommendation on standardised forms for service charge invoices. (Paragraph 53)

13. *The Government should provide for recovery of ongoing building safety costs through existing service charge provisions while improving the transparency of such charges, preferably by implementing the Committee's previous recommendations for standardised forms for service charge invoices. The building safety charge should be reserved only for any leases without a service charge and should be treated as a service charge for the purposes of leaseholder protection.* (Paragraph 54)

The Building Safety Regulator

14. *We strongly recommend that the initial scope of the regime be enshrined in the Bill itself, and not be left to delegated legislation, in order to give stakeholders the certainty they need to prepare for the new regime.* (Paragraph 57)

15. On balance, we consider the initial definition of "higher-risk building" proposed by the Government to be reasonable and practical, though we agree with the evidence calling for the scope to be widened in the future to include a great number of risk

factors. In particular, the scope should take account of the vulnerability of residents and their ability to evacuate the building. We also think the Government should keep under review the development of modern methods of construction. (Paragraph 65)

16. *We recommend that the Government specify in the Bill itself by way of a requirement to "have regard" the factors that must be considered in the future when the scope of the regime is expanded and that the ability of residents to evacuate the building be the principal factor. We also recommend that any requirement to have regard to the ability of residents to evacuate a building explicitly include both the vulnerability of residents and the number of means of egress. Finally, we recommend that the Government indicate its intention to review the scope and set a timetable for doing so.* (Paragraph 66)

17. We recognise that the definition of "building safety risk" is central to the scope of the regime and should be given careful consideration, but on balance we are satisfied with the current wording of clause 16. In particular, we judge that fire would be the main rapid onset event arising from an electrical or gas failure and that therefore these are probably already caught by the clause, although we would welcome clarification on this point, particularly with regard to gas failures that could result in explosion. (Paragraph 70)

18. *Given the importance of the right definition of "building safety risk", we recommend that the Government clarify, perhaps in statutory guidance, the extent to which dutyholders need to consider risks arising from electrical and gas failures. We also recommend that the Government commit to keeping the definition under review.* (Paragraph 71)

19. We understand the argument for including property protection among the regulator's objectives, but we are content that the list of objectives in the draft Bill is a sensible starting point, although we think that it should be kept under review. (Paragraph 74)

20. *We recommend that the Government keep the objectives of the regulator in clause 3 under review and that it consider including property protection among them once the regime has been established. To this end, we recommend that the Government take a power in the Bill to amend by regulations the list of the regulator's objectives.* (Paragraph 75)

21. *We recommend that clause 8 be amended to provide that the regulator must direct someone else to operate the system for the giving of building safety information and cannot itself operate that system.* (Paragraph 79)

22. We see no justification for the provision in clause 12 empowering the Secretary of State to abolish the Building Advisory Committee, the Committee on Industry Competence and the Residents' Panel, and can see no circumstances in which this power would ever sensibly be used. *We recommend that clause 12 be amended to delete the Secretary of State's power to abolish.* (Paragraph 82)

23. We welcome the location of the regulator within the Health and Safety Executive and agree that it has the experience and expertise to implement the new building safety

regime. We are satisfied that the provisions in the Bill already mandate a regulatory model focused as much on inspection during construction as on sanctions for non-compliance. (Paragraph 86)

24. We welcome the intention to fund the regulator through a system of charging and cost recovery, and we are satisfied that the Government and the HSE are working on the detail, but we agree they should publish that detail as soon as possible. We also welcome the Minister's partial commitment to ringfenced funding for those functions of the regulator that cannot easily be financed by the market, although we would welcome a firmer commitment from the Government in that regard. (Paragraph 90)

25. *We recommend that the Government publish with the Bill the details of the charging regime that the regulator will operate to fund its regulatory functions, where cost recovery is practical, and commit unequivocally to ringfenced central funding to cover the cost of functions for which cost recovery will not be possible.* (Paragraph 91)

Design and construction

26. We are persuaded that the role of principal designer in the CDM regulations differs from the one envisaged for the new dutyholder regime and that this could cause confusion in the industry. (Paragraph 98)

27. *We recommend that the Government work with the industry to identify and resolve any potential confusion, including, if necessary, by redefining the role of principal designer intended under the proposed new dutyholder regime. We also recommend that the role be defined in secondary legislation and that this be published alongside the Bill.* (Paragraph 99)

28. We are persuaded that dutyholders at the design and construction phase could struggle to access professional indemnity insurance, although we think this will depend on how the Government chooses to exercise its powers in clause 38. For this reason, we believe that early publication of the general duties of dutyholders could help to alleviate concern in the industry and facilitate the development of appropriate insurance products. (Paragraph 103)

29. *We recommend that the Government consult further with the insurance industry and introduce the Bill only when it (a) can publish for simultaneous consideration draft building regulations showing how it will exercise its powers under clause 38 (dutyholders and general duties) and (b) has commissioned an evaluation of the availability of adequate insurance for all dutyholders, and reported accordingly to Parliament.* (Paragraph 104)

30. It seems to us that few measures are more important to raising levels of industry competence than a system of third-party accreditation and registration for design and construction professionals and that the Government must include provision in the Bill itself for the establishment and national oversight of such a system. (Paragraph 107)

31. *We strongly recommend that the Government include provisions in the Bill itself for establishing a national system of third-party accreditation and registration for all professionals working on the design and construction of higher-risk buildings.* (Paragraph 108)

32. We accept that the detail of the Gateways is best left to secondary legislation, but we think it is essential that this detail be published as soon as possible so that the industry can start to prepare for implementation. *We recommend that the details of the Gateway process be published in draft secondary legislation at the same time as the Bill.* (Paragraph 111)

33. We are concerned that the Government's proposed extension of permitted development rights would allow many building projects to bypass Gateway one and thereby weaken the whole regulatory framework for the design and construction of higher-risk buildings. *We urge the Government, if it does proceed with its PDR proposals, nonetheless to find a way of retaining the benefits of Gateway one.* (Paragraph 113)

34. We are persuaded that Gateway process would be greatly enhanced by a requirement to appoint dutyholders before Gateway one. *We recommend that the secondary legislation that will establish the Gateway process mandate the appointment of dutyholders before Gateway one.* (Paragraph 116)

35. We are concerned that the Bill only removes dutyholder choice in respect of higher-risk buildings. As a result, the majority of building control work will remain exposed to the weaknesses and conflicts of interest identified by Dame Judith Hackitt. We see no good reason not to replace dutyholder choice with a system of independent appointment for all out-of-scope work. (Paragraph 122)

36. *We recommend that dutyholder choice be removed entirely from the building control system and replaced by a system of independent appointment, and that this be made explicit either in the Bill or in secondary legislation to be published alongside it.* (Paragraph 123)

37. We understand the concern from the private building control profession about the conflict of interest arising from the regulator's dual role as building control body for higher-risk buildings and regulator of the building control profession. While we recognise that starting afresh with this Bill would be time-consuming, this is an issue which needs to be addressed if there is to be public confidence in the new system. (Paragraph 128)

38. *The Government should provide clear justification for combining in one body both regulation of the industry and decision-making in relation to higher-risk buildings. If this is desirable, there must be a clear statutory requirement that those involved in decision-making about individual cases of professional competence are wholly operationally independent of those involved in regulation of higher-risk buildings.* (Paragraph 129)

39. We understand the argument that local authority building control teams should be audited in the same way as registered building control approvers, and we are only partially convinced by the provisions allowing for the duties of a failing local

authority to be transferred to another local authority. We think the Bill should make explicit provision for the regulator to monitor and assure the competency of local authority building control, perhaps by mandating UKAS accreditation for all LABC teams. (Paragraph 131)

40. *We recommend that the Bill place an explicit duty on the regulator to monitor and assure the competence of local authority building control teams through provisions comparable to those for the registration of building control approvers, perhaps by mandating UKAS accreditation for all LABC teams.* (Paragraph 132)

Occupation

41. We are concerned at the lack of detail in the draft Bill, or any draft regulations, identifying how the accountable person regime will operate in the case of multiple and complex ownership structures and repairing obligations, particularly where there are multiple accountable persons. This is another aspect which is crucial to the operation of the scheme of the draft Bill yet remains unworked. It will need to be scrutinised closely when the Bill is introduced. (Paragraph 136)

42. *We recommend that the Bill provide for a general duty to co-operate on accountable persons in respect of buildings for which there are multiple accountable persons and that the Government publish statutory guidance alongside the Bill setting out the sorts of behaviours that would be expected under such a duty.* (Paragraph 137)

43. We are concerned about how the relationship between accountable persons and responsible persons will work in practice and are disappointed the Government have not taken the opportunity to rationalise all aspects of building safety—at least as regards fire risk—within a single, consistent, piece of legislation. (Paragraph 140)

44. *In the short term, we recommend that the Government publish statutory guidance alongside the Bill outlining how it expects accountable persons and responsible persons to co-operate in practice. In the long term, we recommend that the Government review the operation of the two regimes with a view to rationalising and simplifying the legislation.* (Paragraph 141)

45. We believe that the Bill could easily mitigate the problem of some accountable persons lacking the time or expertise to understand their responsibilities adequately through the inclusion of a duty on the building safety manager to make accountable persons aware of their responsibilities under the Bill. (Paragraph 145)

46. *We recommend that the Bill place a duty on the building safety manager to inform the accountable person of their responsibilities under the Bill.* (Paragraph 146)

47. We think that the duty on the accountable person to take all reasonable steps to prevent a major incident lacks clarity and that without statutory guidance, especially on the meaning of "all reasonable steps", the provisions will likely be a source of uncertainty and concern for those assuming the role of accountable person. We are also persuaded that the definition of "major incident" sets too high a threshold. (Paragraph 148)

48. *We recommend that the Government publish with the Bill statutory guidance describing the kind of actions that accountable persons will have to take to comply with their duty to "take all reasonable steps" to avoid a "major incident". We also recommend that the definition of "major incident" be amended to include incidents that might reasonably foreseeably cause death or serious injury.* (Paragraph 149)

49. We agree that the safety case report is one of the most onerous responsibilities on the accountable person and that in order to prepare for implementation the industry will need to know what the safety case report will look like and what information it must contain. *We therefore recommend that the Government publish guidance alongside the Bill outlining what information safety case reports will be required to contain.* (Paragraph 152)

50. We agree that the role of building safety manager and the supply of adequately skilled individuals to fill the role will be critical to the success of the new building safety regime for higher-risk buildings. We also agree that without sight of the competence framework the industry cannot begin to recruit and train individuals to fill the role and that unless the Government publishes the competence framework soon the implementation of these provisions will be seriously impeded. (Paragraph 158)

51. *The Government must announce before the Bill is published whether it intends to adopt the competency framework for the role of building safety manager proposed in the report from Working Group 8. If it does not, it must publish with the Bill the full details of the framework it does intend to adopt.* (Paragraph 159)

52. We think that a national system of accreditation and registration for building safety managers will be critical if stakeholders, particularly accountable persons, are to have confidence in the competence of persons undertaking that role, and that any accreditation should be done to agreed common standards. (Paragraph 162)

53. *We recommend that the Government provide, either in legislation or in statutory guidance, for a national system of accreditation to agreed common standards and for a central register of building safety managers.* (Paragraph 163)

54. We agree that building safety managers could well struggle to access professional indemnity insurance and that the Government must work with the industry to facilitate the design of appropriate products. We also think that early sight of the competence framework and precise responsibilities of building safety managers could help to alleviate concern in the industry and facilitate the development of appropriate insurance products. (Paragraph 166)

55. *We recommend that the Government work with the insurance industry to facilitate the development of appropriate professional indemnity insurance products for building safety managers. In particular, we again recommend that the Government publish the competence framework and the precise responsibilities of the building safety manager.* (Paragraph 167)

56. We agree that the lack of clarity in the Bill around the respective responsibilities, and therefore liabilities, of the accountable person and building safety manager could cause confusion and concern, especially where non-compliance could result in criminal sanction. (Paragraph 171)

57. *We recommend that the Government publish statutory guidance alongside the Bill outlining the respective responsibilities of accountable persons and building safety managers.* (Paragraph 172)

58. We are concerned that resident engagement provisions could be too onerous a responsibility on accountable persons and that in many cases it would be done inadequately or not at all. We also agree that the Bill establishes a top-down model of engagement and that the formation of resident groups could both empower residents and lighten the responsibility on accountable persons. (Paragraph 177)

59. *We recommend that the Government consider facilitating, possibly in the Bill itself, the formation of resident groups in every higher-risk building and that these groups be required to include representatives of every type of resident in the building.* (Paragraph 178)

60. We think the power in clause 87 to order residents to give access is wide enough to cover the risks within the scope of Part 4, and the duties of an accountable person under clauses 72 and 73. (Paragraph 183)

61. *We would encourage the Government to consider making it clear on the face of the Bill whether the power in clause 87 includes authorising the use of force but express no view on the conclusion to be reached.* (Paragraph 184)

62. We agree that electrical safety should be an integral part of the building safety system and that the Bill is an opportunity to require regular electrical safety checks in higher-risk buildings. We are clear, however, that no further specific duties should be placed on the accountable person with regard to electrical appliances, as their existing duties are already extremely onerous, although they should be required through the engagement strategy provisions to inform residents of their duties under clause 86 and to provide guidance to facilitate their compliance with those duties. (Paragraph 187)

63. *We recommend that the Government include supplementary provisions in the Bill for mandating regular electrical safety checks in higher-risk buildings.* (Paragraph 188)

Construction Products and Supplementary Provisions

64. We strongly agree that there is insufficient clarity around the future product testing regime, although we acknowledge that discussions on the detail are ongoing. *We recommend that the Government publish with the Bill its proposals for improving the product testing regime.* (Paragraph 191)

65. We are not persuaded that third-party certification alone would provide the transparency and accountability that we and the Hackitt report have previously recommended and still believe that details of test failures and re-run tests should also be made publicly available. (Paragraph 194)

66. *We recommend that the Government provide for the publication of test failures and re-run tests and for the establishment of an independent and unified system of third-party certification in order to introduce greater transparency and rigour into the regulation of construction products.* (Paragraph 195)

67. *We recommend that the Government establish the capacity of the testing market in the UK and, if necessary, provide the necessary funding to increase that capacity so as not to hinder the implementation of the new product testing regime.* (Paragraph 197)

68. We are persuaded that schedule 8 fails to treat products as parts of systems, though we recognise that discussions on this point are ongoing. The future testing regime must assess a product's performance in combination with other products as well as in isolation. (Paragraph 200)

69. *We recommend that the Government make provision, either in the Bill or in secondary legislation, for a testing regime that treats products as parts of systems, perhaps by mandating the provision of a certificate confirming how the product performs when combined with other products.* (Paragraph 201)

70. The construction products regulatory regime envisaged in the Bill and accompanying documents fails to recognise that a single product may have more than one application and that it might be considered safety critical in one application but not in another. Further, this weakness in the regime could be exacerbated by the apparent intention to designate product families, rather than individual products, as safety critical. (Paragraph 204)

71. *We recommend that the Government set out, either in the Bill or in secondary legislation to be published alongside it, how the regime will certify individual products, as opposed to product families, and take account of products with more than one application.* (Paragraph 205)

72. It seems obvious that the provisions in Schedule 8 for the designation of European standards are intended to cover products with European technical assessments. It is less obvious why schedule 8 refers only to "other overseas standards". We understand why it has caused confusion in the industry, although we accept that there might be a good reason for the drafting. (Paragraph 207)

73. *We recommend that the Government make clear that the schedule as worded will cover such products or amend it so that it does.* (Paragraph 208)

74. We cannot judge the adequacy of European harmonised standards, but we agree with the industry that the Government should indicate soon whether it has any plans to review hENs and commission new standards. *The Government should indicate whether or how quickly it intends to review existing European harmonised standards.* (Paragraph 210)

75. On balance, we are broadly satisfied with the scope of the new homes ombudsman and with the definition of terms establishing that scope, though we think that the Government should include among those permitted to make a complaint prospective buyers who are forced to pull out of a purchaser owing to the actions of the developer. (Paragraph 215)

76. *We recommend that the Bill include among those permitted to make a complaint to the new homes ombudsman prospective buyers who are forced to pull out of a purchase owing to any behaviour by the developer that is itself grounds for a complaint. We also recommend that the Bill require developers to establish their own complaints procedures and to inform purchasers of their rights under the new homes ombudsman. Finally, we recommend that the Government monitor the performance of the scheme and amend its scope if necessary.* (Paragraph 216)

Annex: Technical and minor issues

Location	Observation
Clause 11(1)	Refers to "the following functions", with no functions defined (and certainly none "following"). Subsection (3) sets out what the committee's function will be.
Clause 16(1)	Refers to safety of "persons" in contrast with other clauses such as clause 4(1) which, correctly, refer to "people". Similarly: inserted sections 58Z4 and 58Z5 in clause 44; clause 47; clause 86(7); and Sched 8, para 12(a).
Sched 6, para 31, new section 101A to Building Act 1984	"Appointed person" in new section 101A means something different to Schedule 1. Given that an "appointed person" is going to be such a fundamental role within the building regs, this might give rise to avoidable confusion.
Clause 60	The definition of an "occupied" building will not cater for student accommodation. It relies on "dwelling" which is unlikely to encompass such accommodation. In the Building Regulations, they are "rooms for residential purposes", and not "dwellings". The Government will therefore likely have to exercise its powers under clause 60 to amend the definition of "occupied" immediately if it is to include student accommodation, as suggested at EN para 228 (where the distinction between dwelling and student accommodation appears to be accepted).
Clause 71	It is unclear by what means the Government intends to allow a building safety manager (BSM) to appeal a decision of the regulator to direct that the BSM be dismissed.
Clause 86(7)(b)	"for" is included in error (see the definition of "relevant resident's item" paragraph (b)).
Clause 88, ENs	Para 661 of the Explanatory Notes suggests the clause implies into long leases a general duty on the lessee to co-operate with the landlord.
Sched 8, paras 8–10	As drafted, the Government may have no power to issue regulations for "safety-critical products" imposing requirements relating to the risk of disease. The purpose for which the power in paragraph 4 may be exercised in respect of "safety-critical products", seems to be the risk of product failure causing death or serious injury. If a product is "safety-critical", it cannot be subject to any of the "general safety requirements" (paras 11–12) which do probably include requirements to assess, avoid or reduce a risk of disease.

Location	Observation
Sched 3, para 6	The Regulator may disclose to the police any information held "in connection with" any of its building functions. This appears to encompass information obtained, even incidentally, in the execution of a warrant. It is not clear that this is a proportionate and justified interference with the exercise of the occupier's rights under Art 8 of the European Convention on Human Rights. The Regulator will be the HSE. Information acquired by HSE inspectors under their powers under the Health and Safety at Work Act etc 1974 can be disclosed to the police but only used by the police in connection with health and safety legislation or the safety of the State (s 28(3)(c) and (5)(c)). The draft Bill has no such limitation on the use to which information can be put. Disclosure by the HSE to the police should be subject to consistent control.
Sched 8, paras 2–3, ENs paras 92–93	The Explanatory Notes suggest "designated products" in the Bill "covers" construction products "regulated by the EU framework". That depends on how the Government exercises its power (in para 2 of Sched 8) to designate standards. It seems likely the Government will designate standards under this power to match "designated standards" under Art 18B of the Construction Products Regulation 2011 (Regulation (EU) 305/2011), as amended. There is no automatic incorporation of standards designated under the latter.

Formal minutes

Thursday 19 November 2020

Members present:

Clive Betts, in the Chair

Bob Blackman	Paul Holmes
Ian Byrne	Ian Levy
Brendan Clarke-Smith	Mary Robinson
Ben Everitt	Mohammad Yasin

Draft Report (*Pre-legislative scrutiny of the draft Building Safety Bill*) proposed by the Chair, brought up and read.

Ordered, That the Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 218 read and agreed to.

Annex agreed to.

Resolved, That the Report be the Fifth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned until Monday 23 November at 3.30pm.

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

Monday 14 September 2020

Sir Ken Knight, Chair, Building Safety Independent Expert Advisory Panel; **Roy Wilsher**, Chair, National Fire Chiefs Council — Q1–28

Graham Watts OBE, Chief Executive, Construction Industry Council; **Adrian Dobson**, Executive Director Professional Services, Royal Institute of British Architects — Q29–54

Monday 21 September 2020

Dr Debbie Smith OBE, Director of Science and Professional Development, BRE Group; **Peter Capelhorn**, CEO, Construction Products Association; **Dr Scott Steedman**, Director of Standards, British Standards Institution — Q55–94

Lord Porter of Spalding, Fire and Building Safety Spokesperson, Local Government Association (LGA); **Steve Wood**, CEO, National House Building Council; **Mrs Lorna Stimpson**, CEO, Local Authority Building Control — Q95–114

Monday 28 September 2020

Martin Boyd, Chair, Leasehold Knowledge Partnership; **Victoria Moffett**, Head of Building Safety and Fire Programmes, National Housing Federation — Q115–144

Dr Nigel Glen, CEO, Association of Residential Managing Agents; **Richard Silva**, Executive Director, Long Harbour; **James Dalton**, Director of General Insurance Policy, Association of British Insurers — Q145–164

Monday 5 October 2020

Sarah Albon, Chief Executive, Health and Safety Executive; **Peter Baker**, Director of Building Safety and Construction, Health and Safety Executive — Q165–196

Dame Judith Hackitt — Q197–226

Monday 19 October 2020

Lord Greenhalgh, Minister for Building Safety and Communities, Ministry of Housing, Communities and Local Government; **Chandru Dissanayeke**, Director of Building Safety Reform, Ministry of Housing, Communities and Local Government; **Michael Wade OBE**, Expert Adviser, Ministry of Housing, Communities and Local Government — Q227–303

Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

BSB numbers are generated by the evidence processing system and so may not be complete.

1 Allchurch, Mr (BSB0217)

2 Amato (BSB0161)

3 Amer (BSB0156)

4 Anonymous (BSB0012)

5 Anonymous (BSB0215)

6 Anthony Gold Solicitors (Mr Giles Peaker, Partner) (BSB0298)

7 APPG on Leasehold and Commonhold Reform (BSB0415)

8 Architectural and Specialist Door Manufacturers Association (ASDMA) (BSB0419)

9 Arup (Mr Giulioandrea Antonutto Foi, Associate Director) (BSB0238)

10 Asghari, Ms Maryam (BSB0261)

11 Association for Project Safety [APS] (BSB0116)

12 Association for Specialist Fire Protection (BSB0272)

13 Association of British Insurers (BSB0412)

14 Association of Consultant Approved Inspectors (BSB0059)

15 The Association of Residential Managing Agents Ltd (BSB0334)

16 Association, SH Resident (BSB0359)

17 AXA UK (BSB0280)

18 Bacon, Mr Thomas (BSB0145)

19 Barts Health NHS Trust (Julia Miller, Clinical Audit Project Lead) (BSB0376)

20 Base Models (Mr Samuel Morgan, Director) (BSB0095)

21 Basra, Mr Ritesh (BSB0194)

22 BBC (Edward Hailstone, Product Manager) (BSB0030)

23 BEAMA Ltd (BSB0344)

24 Beano Studios (Christina Magill, Personal Assistant) (BSB0248)

25 Beeharry, Jay (BSB0129)

26 Bell, Mr Paul (BSB0176)

27 Bendall, Doctor Oxana (BSB0206)

28 Berkshire Healthcare NHS Foundation Trust (Miss Barbara Sowa, QI Practicioner) (BSB0402)

29 Bernard Sims Associates (Mr Darren Ghaffoori, Principal Designer) (BSB0072)

30 Bernardi (BSB0161)

31 Birmingham Leaseholder Action Group (BSB0153)

32 Bishay, Jessica (BSB0134)

33 Boparan restaurants (Sankar Chandrasekaran, Sous chef) (BSB0048)

34 Bose, Miss Rachel (BSB0119)
35 Bowes, Meechele (BSB0044)
36 Bowkett (BSB0216)
37 Brady, Ms (BSB0102)
38 Bravery, Mrs Ruth (BSB0024)
39 British Automatic Fire Sprinkler Association (BAFSA) (BSB0124)
40 British Cables Association (BSB0276)
41 British Library (Mrs Annika McQueen, Learning Facilitator) (BSB0188)
42 British Plastics Federation (BSB0397)
43 British Property Federation (BSB0358)
44 British Red Cross (Miss Van Milcarina Bastos, Trainer) (BSB0378)
45 British Standards Institution (BSI) (BSB0429)
46 Brodie, Mr Jonathan Ross (BSB0211)
47 Brodie, Mrs Maggie (BSB0195)
48 Bromley, Mr (BSB0292)
49 Brookstone (BSB0136)
50 BT Sport (Miss Jessica Pearce, On Air Motion Designer) (BSB0268)
51 Buck, Ms Megan (BSB0019)
52 Building Safety Register (BSB0088)
53 Bullock (BSB0020)
54 Burgess (BSB0049)
55 Burke (BSB0175)
56 Burton, DB (BSB0152)
57 Busby, Ms Sarah (BSB0171)
58 Business Sprinkler Alliance (BSB0084)
59 Butler & Young Approved Inspectors Limited (BSB0357)
60 CABE, LABC, NHBC, RICS, CIOB, CIC, ACAI, and CICAIR (BSB0054)
61 Cambridge City Council / 3C Building Control (BSB0348)
62 Carnegy, Mr Chris (BSB0032)
63 Cassels, Mr Edward (BSB0036)
64 Certsure (BSB0328)
65 Chartered Association of Building Engineers (BSB0428)
66 Chartered Association of Building Engineers (BSB0079)
67 Chartered Institute of Architectural Technologists (CIAT) (BSB0285)
68 Chartered Institute of Building (BSB0335)
69 Chartered Institution of Building Services Engineers (BSB0410)
70 Church of England (Philip Brentford, Associate Minister) (BSB0396)
71 coAdjoint Limited (Mr Thomas Matcham, Managing Director) (BSB0148)

72 Cochran, Mr Lawrence (BSB0061)

73 Connolly, Mr Terry (BSB0019)

74 Construction Industry Council (BSB0133)

75 Construction Industry Council Approved Inspectors Register (BSB0310)

76 Construction Leadership Council Professional Indemnity Insurance Sub-Group (BSB0185)

77 Construction Products Association (BSB0065)

78 Consumer Code for New Homes (BSB0076)

79 Contractor, Mr Mannan (BSB0091)

80 Cooper, Mr Ross (BSB0005)

81 Crabtree, Philippa (BSB0189)

82 Craig (BSB0352)

83 Crowder, Mr Patrick (BSB0146)

84 Cummins, Sarah (BSB0178)

85 D'cruz (BSB0394)

86 Dalgety, MS Michelle (BSB0112)

87 Davies, Mr Philip (BSB0003)

88 Davies, Simon (BSB0115)

89 Dhaliwal, Mr Rohit (BSB0235)

90 Doherty, Eleanor (BSB0127)

91 Dorset and Wiltshire Fire and Rescue Service (BSB0347)

92 East London NHS Foundation Trust (Ms Leanne Kern, Occuational Therapist) (BSB0050)

93 Eaton UK (BSB0266)

94 ECA (BSB0257)

95 Ecologic Architects (Ms Sumita Singha, Chartered architect) (BSB0165)

96 Edwards, Benita (BSB0170)

97 Edwards, Ms Tracy (BSB0149)

98 Elaine (BSB0393)

99 Electrical Safety First (BSB0053)

100 Elliot (BSB0175)

101 Emily Duncan Place Leaseholders (BSB0234)

102 Emily Duncan Place Tenants and Residents Association (BSB0122)

103 Emirates Airline (Mr N Gibert, Airport Service Agent) (BSB0180)

104 Engineered Panels in Construction (trading as EPIC) (BSB0301)

105 Estates and Management, and Consensus Business Group (BSB0416)

106 Exposure Films ltd (Mr Alex Estrella, Producer) (BSB0342)

107 Farlane (BSB0175)

108 Federation of Master Builders (BSB0321)

109 Fellowship of Clerks of Livery Companies (Mr David Barrett, Adminstrator) (BSB0014)
110 Fernandes, S (BSB0420)
111 The Fire Brigades Union (BSB0066)
112 Fire Safety Action Group (BSB0138)
113 Fire Sector Federation (BSB0390)
114 FIRSTPORT (BSB0042)
115 Fitzrovia Centre (Miss Gabriela Antonutto Foi, Facility Manager) (BSB0238)
116 Fladgate LLP (BSB0069)
117 Fluker, Ms Julie (BSB0019)
118 Franklin House Leaseholders Syndicate (BSB0017)
119 G15 largest London housing associations, and Network Homes (BSB0071)
120 Gateway Building Control (BSB0052)
121 Generation Rent (BSB0362)
122 Giles, Mrs (BSB0025)
123 Goulden, Peter (BSB0233)
124 Grannell, Mr Matthew (BSB0163)
125 Greater Manchester High Rise Task Force (BSB0411)
126 Green, Mr Ed (BSB0213)
127 Gross (BSB0067)
128 Guild of Architectural Ironmongers (BSB0327)
129 Gutierrez, Ana (BSB0035)
130 Gyurindak, Elizabeth (BSB0381)
131 Hagan, Mr James (BSB0007)
132 Hamshaw (BSB0184)
133 Hazelton, Mr Tom (BSB0008)
134 Health and Safety Executive (BSB0424)
135 Helping Hands (Miss Maryte Stankeviciute, Carer) (BSB0182)
136 Herlitz, (BSB0317)
137 Holborow, Mr Richard (BSB0354)
138 Holdsworth, Mr Richard (BSB0252)
139 Holland, Jason (BSB0413)
140 Homeowners of L&Q (BSB0098)
141 Homes for Scotland (BSB0331)
142 Horan, Ms (BSB0090)
143 Hospice—Charity sector (Mrs Sarah Wreathall, Medical secretary) (BSB0174)
144 House of Commons (Dr Lydia Davis, Hansard Reporter) (BSB0269)
145 Hoyte, Ms (BSB0101)
146 HSBC (James Ball, Mortgage Adviser) (BSB0131)

147 Hulme, Ms Georgie (BSB0040)

148 Humphries, Mrs Kay (BSB0364)

149 Hutchinson, Emma (BSB0107)

150 Idili, Ms Simonetta (BSB0063)

151 Illingworth, James (BSB0222)

152 Independent Consultant + CEO The UK Fire Forum & Global Fire Forum (Mr Stephen Mackenzie, Fire, Security & Resilience Consultant & CEO) (BSB0324)

153 The Institute of Materials, Minerals and Mining (IOM3) (BSB0414)

154 Institute of Residential Property Management (BSB0401)

155 Institute of Workplace and Facilities Management (IWFM) (BSB0426)

156 The Institution of Engineering & Technology (BSB0253)

157 Institution of Structural Engineers (BSB0250)

158 Institution of Structural Engineers (BSB0064)

159 Insulation Manufacturers Association (BSB0259)

160 International Underwriting Association (BSB0323)

161 Jackson (BSB0087)

162 Jackson, Mr Christopher J (BSB0019)

163 Jafar, Mr (BSB0096)

164 JMW Solicitors LLP (Ms Kate Ledwidge, Lawyer) (BSB0157)

165 Johnston, Mrs Anna (BSB0263)

166 Jones, Ms (BSB0260)

167 Jones, Ms G (BSB0201)

168 Kanesan (BSB0105)

169 Keil, Mr Jonathan (BSB0210)

170 Kelly (BSB0244)

171 Kelly, Alex (BSB0160)

172 Kennedy, Kathryn (BSB0371)

173 Keough, James (BSB0205)

174 Kerruish, Mr Jack (BSB0365)

175 Kielar, Mr Pawel (BSB0019)

176 Kiely, Mr Marius (BSB0144)

177 King, Mr Michael (BSB0313)

178 Kingspan (BSB0277)

179 Kinnunen, Ms Laura (BSB0109)

180 Knight, Mr Ken (BSB0019)

181 LABC (BSB0307)

182 Laird, Ms Debbie (BSB0029)

183 Law Society (BSB0408)

184 Law Society of Scotland (BSB0284)

185 LB Camden (BSB0311)

186 Leasehold Advisory Service (BSB0305)

187 Leasehold Knowledge Partnership (BSB0255)

188 Lee, C (BSB0120)

189 Lee, Miss Katie (BSB0275)

190 Leusca Feher, Mrs Maria (BSB0043)

191 LGA (BSB0062)

192 Lincolnshire Education Authority (Mrs Lynne Hamshaw, retired school teacher) (BSB0141)

193 Lloyd, Mr Robert (BSB0007)

194 Lobo (BSB0175)

195 Logistics (Mr Tony James, Operations Manager) (BSB0046)

196 London Councils (BSB0208)

197 London Fire Brigade (BSB0270)

198 Long Harbour, and HomeGround Management Limited (BSB0409)

199 Lynch, F (BSB0128)

200 M, Ms Valeria (BSB0015)

201 Madams, Mr Philip (BSB0028)

202 Magellan House Residential Management Company Limited (BSB0172)

203 Magon, Ms A (BSB0239)

204 Manchester Cladiators (BSB0326)

205 Manchester Sustainable Communities (Phil Murphy, Independent Expert) (BSB0421)

206 Manley, Adam (BSB0026)

207 Mann, Ms Sarah (BSB0159)

208 Martin, Miss Shelley (BSB0007)

209 Mason, Mr (BSB0057)

210 Maurice Webb Limited (BSB0389)

211 Mayor of London (BSB0423)

212 McGavin, Mr Sam (BSB0191)

213 Medtronic (Mr Stephen Timperley, Sales Manager) (BSB0045)

214 Melmore (BSB0175)

215 Melmore, Ms Jennifer (BSB0221)

216 Mengerink (BSB0241)

217 Mistry (BSB0018)

218 Modular & Portable Building Association (MPBA) (BSB0337)

219 Moffat, Dr Chris (BSB0114)

220 Monterosa (Mr Paul Kirven, Executive Producer) (BSB0162)

221 Moore, Mr Jon (BSB0022)

222 Morris (BSB0220)

223 Morrison, Katie (BSB0108)

224 Morrison, Rachael (BSB0130)

225 Morrison, Tristan (BSB0130)

226 Morton (BSB0033)

227 MPA The Concrete Centre (BSB0082)

228 mr (Andrew Watson MRICS; MaPS, Building Surveyor and Health and Safety Practitioner) (BSB0278)

229 Murphy, Mr Stuart (BSB0264)

230 Naomi A. (BSB0308)

231 National Federation of ALMOs (BSB0246)

232 National Fire Chiefs Council (BSB0304)

233 National Fire Sprinkler Network (BSB0245)

234 National House Building Council (NHBC) (BSB0322)

235 National Housing Federation (BSB0418)

236 National Leasehold Campaign (NLC) (BSB0406)

237 National Social Housing Fire Strategy Group (BSB0343)

238 Navigation Road Residents Association (BSB0097)

239 NHS (Dr Jessica Radley, doctor) (BSB0038)

240 NHS (Dr Rupert Berkeley, Doctor) (BSB0093)

241 NHS (Dr Siobhan Tierney, Clinical Psychologist) (BSB0095)

242 NHS (Ms laura Allum, Physiotherapist) (BSB0151)

243 None (Ms Katharine Partridge, Retired) (BSB0405)

244 Nottinghamshire Fire and Rescue Service (BSB0027)

245 O'Brien, Mr Paul (BSB0019)

246 O'Rourke, Mr Callum (BSB0139)

247 Olympic Park Homes Action Group (BSB0193)

248 One West India Quay Residents' Association (BSB0369)

249 Patel, Vishalkumar (BSB0127)

250 Pearce, Mr Ben (BSB0192)

251 Phenolic Foam Manufacturers' Association (PFMA) (BSB0333)

252 Phillips (BSB0173)

253 Phillips (BSB0175)

254 Places for People (BSB0290)

255 Plumis Ltd (BSB0366)

256 Prentice, (BSB0186)

257 Prihar, Mr Maninder (BSB0007)

258 Prior, Fairness and Accountability in Home Ownership Stephen (BSB0279)
259 Private (Ms Nicola Moores, Carer) (BSB0002)
260 The Property Ombudsman (BSB0273)
261 Propertymark (BSB0295)
262 Pucci, Rino (BSB0118)
263 Quadrant Building Control (BSB0051)
264 Quartey, Ms Aba (BSB0198)
265 Rautio, Nina (BSB0319)
266 Reddy, Dr Bobby (BSB0142)
267 Residents' Association of Canary Riverside (BSB0265)
268 RIBA Expert Advisory Group (Fire Safety) (BSB0325)
269 Richards, Mr Dave (BSB0121)
270 Richmond House residents (BSB0143)
271 Riverside Quarter London SW18 Residents Association (BSB0167)
272 Robinson, Victoria (BSB0166)
273 ROCKWOOL Ltd (BSB0332)
274 Rodgers, Mr Raymond (BSB0006)
275 Rogers (BSB0361)
276 Ross, MR P (BSB0380)
277 Royal Incorporation of Architects in Scotland (BSB0293)
278 Royal Institute of British Architects (BSB0349)
279 Royal Institution of Chartered Surveyors (BSB0368)
280 Sabbah, Mr Yonathan (BSB0068)
281 Salix Homes (BSB0297)
282 Sato (BSB0175)
283 Self employed (M C Thorburn, Independent Financial Adviser) (BSB0309)
284 Shah, Mr Anish (BSB0181)
285 Sheehan, Cleo (BSB0341)
286 Shrimpton (BSB0168)
287 Signal Building Residents Association, High Point Village, Hayes UB3 4FG (BSB0147)
288 Sillitoe (BSB0200)
289 Simpson Spence Young (Miss Lauren Moore, Administrator) (BSB0085)
290 Single Ply Roofing Association (SPRA), Liquid Roofing and Waterproofing Association (LRWA), and National Federation of Roofing Contractors (BSB0132)
291 Sipple, Mr Douglas (BSB0007)
292 Sir Robert McAlpine (BSB0377)
293 Slough Borough Council (Cllr Christine Hulme, Cllr) (BSB0073)
294 Smith, Andy (BSB0150)

295 Smith, Miss Bryony (BSB0094)

296 Smith, Ms (BSB0081)

297 Smullen, Ms Edel (BSB0197)

298 Social Chain (Miss Anna Graham, Ecommerce Director) (BSB0110)

299 SOCIETY OF LABOUR LAWYERS (BSB0155)

300 Sofat, Ritu (BSB0164)

301 Southampton Cladding Act Group (BSB0373)

302 Specialist Engineering Contractors' (SEC) Group (BSB0281)

303 Squires, Mr Stephen (BSB0226)

304 Stafford, Rebecca (BSB0247)

305 Stafford, Rebecca (BSB0103)

306 STOCKER (BSB0023)

307 Structural-Safety (BSB0039)

308 Stuart, K (BSB0271)

309 The Swish Residents Association (BSB0011)

310 Symbiotic Relationships Ltd (Miss Claire Gamble, Site Manager) (BSB0315)

311 Taylor Wessing (Rachel Davison, Solicitor) (BSB0212)

312 Taylor, Ross (BSB0140)

313 Teamsales (Mr Thomas Haddon, Recruitment Consultant) (BSB0203)

314 Thomson, Mr Samuel (BSB0249)

315 Toman, Siobhan (BSB0296)

316 Tormead School, Guildford (Mr James Earl-King, Head of Hockey and Cricket) (BSB0230)

317 Town and Country Planning Association (BSB0425)

318 Tye, Ms J (BSB0287)

319 Tyrrell-Marsh, Mr Ian (BSB0288)

320 UCL (Professor Andrew Hudson-Smith, Professor) (BSB0355)

321 UK Cladding Action Group (BSB0400)

322 UK Finance (BSB0256)

323 UK Parliament (Ms Fleur Anderson, Member of Parliament for Putney, Roehampton and Southfields) (BSB0353)

324 UK Parliament (Ms Shabana Mahmood MP, Member of Parliament for Birmingham Ladywood) (BSB0083)

325 Unemployed due to Covid Pandemic (Evidence against Building Safety Bill Charlie Jones, Unemployed due to Covid Pandemic) (BSB0382)

326 Unipol Student Homes (BSB0214)

327 United Kingdom Accreditation Service (BSB0267)

328 University of Leeds (Dr Stuart Hodkinson, Associate Professor) (BSB0421)

329 University of Oxford (Professor Susan Bright, Professor of Land Law) (BSB0089)

330 University of Southampton (Jake Ellis, Student Enterprise Co-ordinator) (BSB0137)
331 Various Primary Schools—Supply (Mr Sunil Kapur, Teaching Assistant) (BSB0330)
332 Velocity Building Residents (BSB0312)
333 Video Production (Mr Matthew Browne, Producer/Director) (BSB0041)
334 Walker-Wright, Mrs Dominique (BSB0384)
335 Wallace Partnership Group Limited (BSB0055)
336 Ward, Mr (BSB0021)
337 Ward, Ms Annabel (BSB0145)
338 WaterAid (Ms Victoria Tills, Management accountant) (BSB0302)
339 Webb, Mr Mark (BSB0190)
340 Whatton (BSB0177)
341 Whelan, Mr Simon (BSB0339)
342 Whittingham (BSB0010)
343 Williams, Mr Sam (BSB0193)
344 Wilton (BSB0196)
345 Woodman (BSB0175)
346 Working Group 8 of the Competence Steering Group (BSB0427)
347 Wyeth, Ms Lynn (BSB0111)
348 Yaguello, Ms (BSB0080)
349 Yarmolchuk, Svitlana (BSB0303)
350 Zenith Close Residents Association (BSB0363)
351 Zurich Insurance (BSB0422)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

Session 2019–21

Number	Title	Reference
1st	Protecting rough sleepers and renters: Interim Report	HC 309
2nd	Cladding: progress of remediation	HC 172
3rd	Building more social housing	HC 173
4th	Appointment of the Chair of Homes England	HC 821