

## **Draft Building Safety Bill**

### **Memorandum concerning the Delegated Powers in the Bill for the Delegated Powers and Regulatory Reform Committee**

#### **A. INTRODUCTION**

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Building Safety Bill (“the Bill”). The Bill was published in draft on 20 July 2020. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected<sup>1</sup>.

#### **B. SUMMARY OF THE BILL**

2. The Grenfell Tower fire represented the greatest loss of life in a residential fire since the Second World War. Following the tragedy, the Government commissioned the *Independent Review of Building Regulations and Fire Safety: final report* (the “Independent Review”), led by Dame Judith Hackitt.
3. The Independent Review found that the current system for ensuring fire and structural safety for high-rise multi-occupied buildings is not fit for purpose. It set out recommendations regarding the establishment of a new regulatory regime and how to create long lasting cultural change within the fire safety and built environment sectors.
4. The Government accepted all the recommendations of the Independent Review. In our consultation *Building a Safer Future: Proposals for reform of the building safety regulatory system* and subsequent response to it, we set out our proposals to implement and manage a reformed building safety system covering the performance of all buildings as well as the management of fire and structural safety risks (“building safety risks”) in new and existing buildings in scope.
5. The Bill makes provision for the legislative framework that will underpin a stronger regulatory regime for building safety, including:
  - A new Building Safety Regulator which will be established within the Health and Safety Executive. The Building Safety Regulator will oversee the safety and performance of all buildings, implement the new, more stringent regulatory regime for higher-risk buildings, and assist and encourage competence among the built environment industry and registered building inspectors;
  - A new, more stringent regulatory regime for higher-risk buildings. It is our intention that from the outset of the new regime (via secondary legislation) the initial scope of a ‘higher-risk building’ will apply to all multi-occupied residential

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<sup>1</sup> For a definition of terms used in this document refer to the glossary of terms in Annex B to the Explanatory Notes for the draft Building Safety Bill.

buildings of 18 metres or more in height, or more than six storeys (whichever is reached first);

- Clearer accountability for, and stronger duties on, those responsible for the safety of higher-risk buildings throughout design, construction and occupation, and stronger enforcement and sanctions to deter non-compliance;
- New requirements for the provision of information to residents, opportunities for them to participate in the decision-making about their homes and a stronger framework for escalating safety concerns, alongside new obligations on residents to contribute to the effective management of the safety of their building;
- A new professional structure for building control covering both local authority teams and Approved Inspectors (who will be renamed as registered building control approvers); and
- A stronger and clearer framework to provide national oversight and regulation of construction products.

6. To support the stronger and more effective framework for escalating concerns, the Bill also includes provisions for a new homes ombudsman and repeals the 'democratic filter' requirement placed on tenants and other individuals wishing to escalate complaints to the Housing Ombudsman.

7. To deliver the more stringent regulatory regime for higher-risk buildings, the Bill includes a range of detailed measures to make provision for:

- Creating the concept of dutyholders for those managing risks across the lifecycle of higher-risk buildings;
- A system of Gateway points to ensure that building safety risks are given appropriate consideration during a building's design and construction;
- A new system of building registration and certification to ensure the Building Safety Regulator is notified about higher-risk buildings and to provide assurances about the building's safety;
- A safety case regime to ensure that a building's safety risks are managed throughout its occupation;
- An obligation on the Accountable Person to produce a Residents' Engagement Strategy which describes the information that will be provided to residents on decisions about the management of their building, which of those decisions they will be consulted on, arrangements for obtaining and taking account of their views and how the Accountable Person's methods for promoting participation will be measured and kept under review;
- A new route for residents to escalate safety concerns about the building safety risks relating to their building;
- Provision for duties on residents to keep any relevant resident's item (e.g. electrical installations) in repair and proper working order, to take reasonable care not to damage any relevant safety item (e.g. fire doors), to comply with a request from an Accountable Person for information required for the purposes of their duty to carry out building safety risk assessments and to take reasonable steps to prevent serious harm; and

- A golden thread of building information which the relevant dutyholder must maintain throughout the lifecycle of the building in accordance with prescribed standards and must pass to subsequent dutyholders and successors in title.

#### 8. The Delegated Powers in the Bill are:<sup>2</sup>

- Clause 3(2): The regulator’s objectives
- Clause 12(1) and (2): Committees: power to amend or repeal
- Clause 13: Local authorities and fire and rescue authorities: provision of assistance etc to regulator
- Clause 14(4) and (6): Provision of assistance etc: supplementary
- Clause 15(1): Section 13: guidance
- Clause 16(1): Meaning of “building safety risk”
- Clause 19(1): Meaning of “higher-risk building”
- Clause 20(1): Modification of Part 4 in relation to certain kinds of higher-risk building
- Clause 25(2): Annual report about information provided under mandatory reporting requirements
- Clause 30(1), (2), (3) and (7): Review by regulator of certain decisions made by it
- Clause 32: Cooperation and information sharing  
Schedule 3: Cooperation and information sharing:
  - a. Paragraph 2(4): “Local authorities”
  - b. Paragraph 4(2) and (3): “Ombudsmen”
  - c. Paragraph 4(7) “Ombudsmen”
- Clause 33(1): Fees and charges
- Clause 35(1) and (3): Interpretation of Part 2
- Clause 36: Building control authorities –
  - a. New section 91ZB(1) of the Building Act 1984: “The regulator: building control authority for other work”
  - b. New section 91ZC(2), (3) and (5) of the Building Act 1984: “Section 91ZB: supplementary”
- Clause 37: Building regulations –
  - a. New paragraph 1A of Schedule 1 to the Building Act 1984: “Procedural requirements etc: general”
  - b. New paragraph 1B of Schedule 1 to the Building Act 1984: “Applications for building control approval”
  - c. New paragraph 1C of Schedule 1 to the Building Act 1984: “Certificates: approved schemes”
  - d. New paragraph 1D of Schedule 1 to the Building Act 1984: “Obtaining, keeping and giving information and documents”
  - e. New paragraph 1E of Schedule 1 to the Building Act 1984: “Reporting requirements: duty to establish and operate system”
  - f. New paragraph 1F of Schedule 1 to the Building Act 1984: “Form and content of documents etc”

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<sup>2</sup> For the purposes of this list, some clauses have been recorded more than once, to take account that the particular clause has delegated powers with different procedures.

- g. New paragraph 1G of Schedule 1 to the Building Act 1984: “Inspection, testing etc”
- h. New paragraph 1H of Schedule 1 to the Building Act 1984: “Applications to building control authorities: extension of period by agreement”
- i. New paragraph 1I of Schedule 1 to the Building Act 1984: “Appeals”
- Clause 38: Dutyholders and general duties –
  - a. New paragraph 5A of Schedule 1 to the Building Act 1984: “Appointed persons”
  - b. New paragraph 5B of Schedule 1 to the Building Act 1984: “General duties “
- Clause 39: Industry competence – New paragraph 5C of Schedule 1 to the Building Act 1984: “Competence requirements”
- Clause 40: Lapse of building control approval etc –
  - a. New section 32(5) of the Building Act 1984: “Lapse of building control approval”
  - b. New section 53A(7) of the Building Act 1984:” Lapse of initial notice”
  - c. New paragraph 4A(7) to Schedule 4 to the Building Act 1984: “Lapse of public body’s notice”
- Clause 41: Determination of certain applications by Secretary of State – new section 30A(1), (3), (6), (7), (8) of the Building Act 1984
- Clause 42: Enforcement –
  - a. New section 35B(1) and (8) of the Building Act 1984: “Compliance notices”
  - b. New section 35C(1) of the Building Act 1984: “Stop notices”
  - c. New section 35D(1), (2) and (3) of the Building Act 1984: “Compliance and stop notices: supplementary”
- Clause 44: Regulation of building control profession –
  - a. New sections 58B and 58N of the Building Act 1984: register of registered building inspectors and register of registered building control approvers
  - b. New sections 58C and 58O of the Building Act 1984: applications for registration as building inspectors or as registered building control approvers
  - c. New sections 58E, 58G, 58H and 58I of the Building Act 1984: code of conduct, professional misconduct investigations, and sanctions
  - d. New sections 58Q, 58S, 58T, 58U, 58Y, 58Z, 58Z2, 58Z3, 58Z4 and 58Z5 of the Building Act 1984: professional conduct rules and investigations and sanctions in relation to those rules; operational standards rules and investigations and sanctions in relation to those rules; and reporting requirements
  - e. New sections 58T, 58U, 58Z3 and 58Z4 of the Building Act 1984: prescribing cases where sanctions notices must be copied to local authorities
- Clause 46: Functions exercisable only with advice of registered building inspectors –

- a. New section 46A of the Building Act 1984: “Building control authorities’ restricted functions”
  - b. New section 54B of the Building Act 1984: “Registered building control approvers’ restricted functions”
- Clause 48: Higher-risk building work: registered building control approvers – new section 52A of the Building Act 1984: “Cancellation of initial notice when work becomes higher-risk building work”
- Clause 49: Higher-risk building work: public bodies – new section 54A of the Building Act 1984: “Public bodies and higher-risk building work”
- Clause 50: Information gathering – new subsections (4C) and (4D) of section 53 of the Building Act 1984
- Clause 51: Insurance – amendment to section 47(6), (6B) and (6C) of the Building Act 1984
- Clause 52: Information –
  - a. New section 56A of the Building Act 1984: “Giving information by electronic means”
  - b. New section 56B of the Building Act 1984: “Requirement to keep register”
  - c. New section 56C of the Building Act 1984: “Delegation of functions”
  - d. New subsections (4) to (6) of section 55 of the Building Act 1984: “(Appeals)”
- Clause 53: New initial notices -
  - a. Amendment to section 53(8) of the Building Act 1984
  - b. New section 53B(3) and (5) of the Building Act 1984: “New initial notice: change of registered building control approver”
  - c. New section 53C(3), (4), (5) and (6) of the Building Act 1984: “Consideration of transfer certificate and report”
  - d. New section 53D(2) and (3) of the Building Act 1984: “Cancellation of initial notice: change of registered building control approver”
- Clause 54: Cancellation of initial notice - amendment of section 52(1), (3), (5A), (5B) and (7) of the Building Act 1984
- Clause 55: Functions under Part 3 of Building Act 1984 – new section 90A(1), (2) and (3) of the Building Act 1984: “Functions under this Part: the regulator etc”
- Clause 56: Minor and consequential amendments -  
Schedule 5: Minor and consequential amendments in connection with Part 3:
  - a. Paragraph 5(3): amendments to section 6 of the Building Act 1984
  - b. Paragraph 7: amendments to section 8 of the Building Act 1984
  - c. Paragraph 25: new section 35(2) and (3) of the Building Act 1984
  - d. Paragraphs 34 and 36: new sections 47(3A) and 51A(5A) of the Building Act 1984
  - e. Paragraph 40: amendment to section 57 of the Building Act 1984
  - f. Paragraph 42: amendments to section 91A of the Building Act 1984
  - g. Paragraph 62: amendments to Schedule 1 to the Building Act 1984
- Clause 57: Appeals -  
Schedule 6: Appeals and other determinations - paragraph 31: new section 101A of the Building Act 1984: “Appeal: refusal to consider application etc on ground is higher-risk building work”

- Clause 58: Fees and charges - new section 105A of the Building Act 1984: “Fees and Charges”
- Clause 60(5): Meaning of “occupied” and “resident”
- Clause 61(6) and (7): Accountable person
- Clause 62(1): Occupation: registration requirement
- Clause 63(5) and (6): Registration of higher-risk buildings
- Clause 64(1): Occupied building: requirement to apply for a certificate
- Clause 65(3) and (4): Building assurance certificate
- Clause 66(1) and (2): Applications for certification: further provision
- Clause 68(5) and (6): Regulator’s power of veto over appointment
- Clause 69(4): Terms of appointment
- Clause 71(1) and (3): Directions to remove building safety manager or nominated individual
- Clause 71(3) and (4): Directions to remove building safety manager or nominated individual
- Clause 72(2): Assessment of building safety risks
- Clause 73(3): Steps to prevent a major incident
- Clause 73(5): Steps to prevent a major incident
- Clause 74(3): Safety case report
- Clause 75(3): Notification and provision of report to the regulator
- Clause 77(1): Duty as regards buildings insurance
- Clause 78(1): Mandatory reporting requirements
- Clause 78(2): Mandatory reporting requirements
- Clause 79(1) to (4): Keeping information about higher-risk buildings
- Clause 80(1) to (3): Provision of information etc to the regulator, residents and other persons
- Clause 81(2): Provision of information etc to a new accountable person
- Clause 82(4) and (7): Residents’ engagement strategy
- Clause 82(9): Residents’ engagement strategy
- Clause 83(1), (3) and (4): Requests for further information
- Clause 84(3) and (4): Complaints procedure: accountable person
- Clause 85(3) and (4): Complaints procedure: regulator
- Clause 86(4): Duties on residents
- Clause 86(8): Duties on residents
- Clause 89: Building safety charges –
  - a. New section 17G(5) and (6) of the Landlord and Tenant Act 1985: “Building safety charges”
  - b. New section 17H(6) and (7) of the Landlord and Tenant Act 1985: “Building safety charges: landlord obligations”
  - c. New section 17K(4) and (5) of the Landlord and Tenant Act 1985: “Limitation of building safety charges: consultation requirements”
  - d. New section 17L(3) and (4) of the Landlord and Tenant Act 1985: “Consultation requirements: supplementary”
  - e. New section 17M(3) of the Landlord and Tenant Act 1985: “Consultation requirements: urgent cases”
  - f. New section 17O(4) and (5) of the Landlord and Tenant Act 1985: “Limitation of building charges: excluded costs”

- g. New section 17S(2) and (5) of the Landlord and Tenant Act 1985: “Notice to accompany demands for building safety charges”
  - h. New section 17U(9) and (10) of the Landlord and Tenant Act 1985: “Building safety charge contributions to be held on trust”
  - i. New section 17V(2), (3) (13), (14) and (15) and (17) of the Landlord and Tenant Act 1985: “Building safety charge contributions to be held in designated account”
- Clause 91(1): Compliance notices
  - Clause 91(8): Compliance notices
  - Clause 92(1), (2) and (4): Compliance notices: supplementary
  - Clause 93(5): Appeals against compliance notice
  - Clause 94(4): Offence: contravention giving rise to risk of death and serious injury
  - Clause 95(4): Notification by regulator before making application under section 96
  - Clause 96(7): Order appointing special measures manager
  - Clause 97(7): Orders under section 96: supplementary
  - Clause 99(1) and (2): Notifications about orders under section 96
  - Clause 100(2): Variation or revocation of orders under section 96
  - Clause 101(1): Guidance
  - Clause 103(1), (2), (3) and (4): Appeals against decisions of the regulator
  - Clause 106(1) and (5): The new homes ombudsman scheme
  - Clause 107(1) and (2): Meaning of developer
  - Clause 108(1) to (7): Power to require persons to join scheme
  - Clause 109(1) and (2): Developers’ code of practice
  - Clause 110: Construction products -  
Schedule 8 - Construction products regulations:
    - a. Paragraphs 1 to 13 – power to make regulations
    - b. Paragraph 14 - Information-sharing
    - c. Paragraph 15(1) – power to make transitional, transitory, consequential and supplementary provisions
    - d. Paragraph 16 - power to repeal, amend or re-enact retained EU law and any other enactment (including this schedule)
  - Clause 111(3): Architects: discipline and continuing professional development
  - Clause 112: Power of Architects Registration Board to charge fees – new section 24A of the Architects Act 1997: “Fees”
  - Clause 115(1) and (2): Power to make consequential provision
  - Clause 118: Commencement and transitional provision

### **C. GENERAL JUSTIFICATION**

9. This is a large and complex draft Bill legislating for a reformed building safety regulatory system. We believe that it is appropriate for provisions of the draft Bill to confer powers to make delegated legislation and that the number of proposed delegated powers outlined in the Memorandum is justified, due to three principal reasons.

10. We believe it is not appropriate for all provisions to be provided for on the face of the draft Bill, and by enabling the Secretary of State to make secondary legislation, they will be able to respond more effectively to changing circumstances than by amending primary legislation. Examples of such circumstances include:
  - a. Whilst we have been working closely with the Health and Safety Executive to draft the Bill, until the Building Safety Regulator is fully established there is a strong justification for ensuring it has the ability to shape the operationalisation of the regime as it comes into force through secondary legislation;
  - b. Our understanding of building safety risks will continue to evolve and improve over time. We want to ensure flexibility across the regulatory regime as this understanding develops; and
  - c. As the processes, structure and culture of the built environment industry continues to evolve, we need the flexibility to make changes to the system.
11. We are publishing this Bill in draft form and, whilst we believe that the use of these delegated powers is appropriate, the pre-legislative scrutiny process will enable us to review and make changes before the final Bill is introduced, this could include the number of delegated powers. For example, over half of the delegated powers in the Bill relate to setting out the procedures, operational issues and minor and technical matters to operationalise the new regulatory regime, such as application or appeal procedures. This detail is not something we consider Parliament would expect to see on the face of the final Bill, but the draft Bill scrutiny process is an opportunity for Parliament to give its view on whether we have struck the correct balance.
12. One of the reasons why the number of delegated powers is high is because of the number of proposed changes we are making to the existing regulatory provisions in the Building Act 1984 in order to deliver our policy. In a number of the areas where we are making numerous detailed changes to the Building Act 1984, we have counted each individual power to make changes as a separate delegated power, so for example for clause 37 ('Building regulations') we have counted nine separate delegated powers. However, we expect all of these different powers across the Bill to make building regulations to be used to make only a small number of statutory instruments in total.
13. We consider that we have ensured that where the delegation of a power to the Secretary of State is considered more controversial, such as due to the breadth of the power or because it amends primary legislation, regulations made under the power will be subject to affirmative resolution procedures in both Houses of Parliament. This will ensure that both Houses of Parliament will have the ability to scrutinise, debate and approve these regulations.
14. Acts such as the Housing and Regeneration Act 2008, which created a new regulatory regime by legislating for the Homes and Communities Agency and the Social Housing Regulator, are an example of another complex legislative programme that also contained a high number of delegated powers.



## **D. ANALYSIS OF DELEGATED POWERS BY CLAUSE**

### **Clause 3(2): The regulator's objectives**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary procedure: Negative Procedure*

#### *Purpose and context*

15. Clause 3 outlines two objectives that the Building Safety Regulator must have a view to when exercising its 'building functions'.

16. The clause lists the Building Safety Regulator's main building functions but gives the Secretary of State a power to prescribe additional functions of the Building Safety Regulator so that they are 'building functions'.

#### *Justification for delegation*

17. The purpose of the power is to ensure the Building Safety Regulator's objectives, strategic plan, powers to share information, and duties to cooperate will apply to all building functions of the Building Safety Regulator. The power to prescribe enables the Secretary of State to ensure that these provisions apply to any additional functions which are to be undertaken by the Building Safety Regulator, where those functions could appropriately be categorised as building functions (and therefore covered by the objectives, strategic plan and so on).

18. We are aware of two possible scenarios where the power may be needed: (a) where the Building Safety Regulator and a Minister, Government Department or public authority agrees (under section 13(4) of the Health and Safety at Work etc Act 1974) that the Building Safety Regulator should take on a building-related function from that other body; or (b) where secondary legislation (other than under the Building Act 1984 or under the Building Safety Bill) provides for a new function for the Health and Safety Executive which would be appropriately categorised as a 'building function'.

#### *Justification for procedure selected*

19. Regulations to prescribe under this clause will be subject to the negative procedure. The Government considers that this gives Parliament the appropriate level of scrutiny. The effects of a function being categorised as a 'building function' will mainly be felt by the Building Safety Regulator, as the function will need to be included in its strategic plan; the wider impacts of categorisation as a building function, e.g. being covered by the cooperation and information sharing powers, are not likely to be major, particularly given the limited circumstances in which this power would be used.

## **Clause 12(1) and (2): Committees: power to amend or repeal**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Affirmative procedure*

### *Purpose and context*

20. Clause 12 provides the Secretary of State with 'Henry VIII' powers to amend or repeal the provisions in (clauses 9, 10 and 11 of this Bill) creating the three statutory committees (the Building Advisory Committee, the committee on industry competence and the residents' panel) by regulations subject to the affirmative procedure in both Houses of Parliament.
21. The Government expects that the role of the three statutory committees will evolve over time. The Government considered the option of not specifying that these committees must be established on the face of the Bill, and instead allowing the Building Safety Regulator to set them up and change them if it sees fit using new section 11A(3) of the Health and Safety at Work Act etc 1974, to enable this flexibility.
22. However, given the importance of these committees to the delivery of the reforms recommended by the Independent Review, the Government concluded that the role of the committees should be made clear in legislation, and any future changes in the role of the committees overseen by Parliament through this delegated power.
23. The power also allows the Secretary of State to make amendments of the Building Safety Bill itself, consequential on the exercise of the power. We expect this power would be used, if necessary, to amend references to the statutory committees in the Bill, if the committees were significantly changed. For example, if the composition and name of the residents' panel changed in response to a widening of the scope of the more stringent regulatory regime (e.g. to include patient and NHS staff representatives if the scope extended to hospitals), it might be appropriate to consequentially amend clause 26 to better reflect the residents' panel's new composition and name.

### *Justification for delegation*

24. These three committees have been established on the face of the Bill to ensure that the recommendations of the Independent Review are met. This will ensure that the Building Safety Regulator from its establishment has the benefit of expert advice and information related to information on its building functions and the standards of buildings (as the Secretary of State currently does from the Building Regulations Advisory Committee) and industry competence, and that residents have a strong voice in the work of the Building Safety Regulator.
25. However, over time the role and function of these committees and the Building Safety Regulator itself could change, for example if the scope of the more stringent regulatory regime changes. In such instances, the effective working of the Building

Safety Regulator could be supported by a change in the remit or membership of the committees, or their replacement with a more effective alternative.

26. The use of this power in relation to the three committees could involve:

- a. In relation to the Building Advisory Committee, the regulation-making power could be utilised once the Building Safety Regulator and industry have matured, such that their respective roles in developing proposals for guidance and regulations need adapting following experience;
- b. In relation to the committee on industry competence, the Government considers that the committee's role is essential in the coming years to ensure the delivery of the Independent Review's recommendations on industry competence. However, the long-term objective of policy is that the built environment industry will mature to the point where it can take on greater responsibility for its own standards-setting and competence oversight. Therefore, the eventual repeal of the committee on industry competence provisions could be an indication of success; and
- c. In relation to the residents' panel, the provisions would need to be reviewed if there are major changes in scope. For example, if hospitals were brought into scope, consideration would be given as to whether to extend the provisions to include engagement with patients and NHS staff, and representatives of those groups.

Justification for procedure selected

27. Regulations made under this power will be subject to affirmative resolution in both Houses of Parliament. This is a Henry VIII power which could be used to make substantial changes to the committees established by the Building Safety Regulator, or to abolish the committees entirely, as well as making consequential amendments of the Building Safety Act 1984 itself. We consider that Parliament should have the opportunity for a high degree of scrutiny in respect of proposals of this nature.

**Clause 13: Local authorities and fire and rescue authorities: provision of assistance etc to regulator**

*Power conferred on: the Building Safety Regulator*

*Power exercised by: Direction*

*Parliamentary procedure: None, but the power cannot be exercised without Secretary of State consent*

Purpose and context

28. The purpose of clause 13 is to ensure that the Building Safety Regulator can call upon support, advice and assistance from local authorities and Fire and Rescue Services when regulating higher-risk buildings, and local authorities (given their building control expertise) when acting as the building control authority for non-higher-risk buildings (notably in a mixed development including a higher-risk building).

29. The Independent Review found that major regulatory decisions on higher-risk buildings could be improved by bringing together Health and Safety Executive expertise, local authority building control expertise (and where appropriate, expertise from the private sector) and fire safety expertise from Fire and Rescue Authorities.
30. To support this, clause 13 enables Fire and Rescue Services and local authorities to provide a wide range of support to the Building Safety Regulator to facilitate the Building Safety Regulator's functions in respect of higher-risk buildings, at the request of the Building Safety Regulator. Clause 13 also enables the local authority to support the Building Safety Regulator in providing building control, when the Building Safety Regulator acts as building control authority for a non-higher-risk building (notably one in a mixed development including a higher-risk building). We intend that advice and support would typically be requested by the Building Safety Regulator ahead of certain key regulatory decisions (e.g. the new Gateway two assessment of full plans documents) or in response to ad hoc issues identified (e.g. in response to escalated resident complaints to the Building Safety Regulator).
31. Clause 13(2) enables the Building Safety Regulator to direct a local authority or a Fire and Rescue Service to provide support for the purposes specified in clause 13(1).
32. This power to direct can only be used following a written request from the Building Safety Regulator to the authority setting out why the assistance is needed, after the authority has had the opportunity to give reasons why it should not be required to provide the assistance, after the Building Safety Regulator has had regard to reasons provided by the authority, and after the Secretary of State has given clearance.

#### Justification for delegation

33. The Government intends to deliver the Independent Review recommendations for involvement of building control and fire safety advice in key decision-making on higher-risk buildings in a cooperative manner, fully compatible with existing local authority and Fire and Rescue Authority governance whenever possible.
34. Clause 32 and Schedule 3 require the Building Safety Regulator, Fire and Rescue Authorities and local authorities respectively to cooperate in respect of their main functions in respect of higher-risk buildings. Clause 13 provides that the Building Safety Regulator will initially seek to secure support from local authorities and Fire and Rescue Authorities through a request (rather than direction). Clause 13 will support this collaborative approach by enabling the Building Safety Regulator to prepare guidance on the process of requesting support or directing it to assist local authorities and Fire and Rescue Authorities.
35. Despite the steps the Government is taking to encourage cooperation, in order to meet the recommendations of the Independent Review, provision of local authority building control and Fire and Rescue Service support to the Building Safety Regulator inevitably will not in all cases be voluntary. The Government believes that it would be appropriate, after exhausting all other options for securing assistance in

regulating higher-risk buildings, for the Building Safety Regulator to be able to insist on assistance from a local authority or Fire and Rescue Authority through a direction.

36. Where the Building Safety Regulator is acting as building control authority for an out of scope building (notably in a mixed development, alongside a higher-risk building), it is appropriate that the Building Safety Regulator can call on the support of local authority building control teams to assist in delivering building control for both the higher-risk building(s) and out of scope building(s) to ensure effective and consistent building control is provided across the development.
37. The requirements for a formal request for assistance to be made by the Building Safety Regulator to the authority, the opportunity for reasons to be provided by the authority justifying not providing assistance, the requirement on the Building Safety Regulator to have regard to those reasons, and the requirement for Secretary of State consent to a direction, together ensure that the power to direct would only be used in extremis. It is nonetheless important that these steps can be taken quickly, if the Building Safety Regulator assesses that a building gives rise to serious safety risks, which it needs assistance to mitigate.

Justification for procedure selected

38. Directions under this power would be given only to specific bodies in very limited circumstances, and only in extremis. The power has a number of safeguards, not least of which is the requirement for Secretary of State consent before the power is used. In addition, it may be necessary for the Building Safety Regulator to move quickly in issuing a direction, particularly if safety is at risk. For all these reasons, the Government considers that it is appropriate to have no Parliamentary procedure in respect of this power to direct.

**Clause 14(4) and (6): Provision of assistance etc: supplementary**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative Procedure*

Purpose and context

39. The purpose of clauses 13 and 14 are to ensure that the Building Safety Regulator can call upon support, advice and assistance from local authorities and Fire and Rescue Services when regulating higher-risk buildings, reflecting that the Independent Review found that major regulatory decisions on higher-risk buildings could be improved by bringing together Health and Safety Executive expertise, local authority building control expertise (and where appropriate, expertise from the private sector) and fire safety expertise from Fire and Rescue Authorities.
40. The provisions also enable the local authority to support the Building Safety Regulator in providing building control, when the Building Safety Regulator acts as building control authority for a non-higher-risk building (notably in a mixed development including a higher-risk building).

41. The Government intends that Fire and Rescue Authorities and local authorities will receive appropriate funding to enable them to provide assistance to the Building Safety Regulator. Clause 13 provides two mechanisms for this. The Secretary of State may make grants to local authorities and Fire and Rescue Authorities to support this work. In addition, clause 14(4) enables the Secretary of State to make regulations requiring the Building Safety Regulator to reimburse costs incurred by Fire and Rescue Authorities and local authorities in delivering activities requested or directed by the Building Safety Regulator.
42. Clause 14 (6) enables the Secretary of State to make regulations relating to the provision of assistance to the Building Safety Regulator by local authorities and Fire and Rescue Authorities, including around the process for request and direction.

Justification for delegation

43. The power to make regulations relating to reimbursement under clause 14(4) reflects that the requirements and principles governing the reimbursement of Fire and Rescue Authorities and local authorities by the Building Safety Regulator are expected to be of considerable interest to these authorities. It is desirable to provide a degree of certainty to these authorities about funding arrangements through setting out the principles to be followed in regulations, given that these authorities will employ and train staff in the expectation that their work to support the Building Safety Regulator will be funded.
44. It is also desirable that changes can be made to reimbursement arrangements, reflecting experience of what types of assistance is requested, feedback from authorities on the initial reimbursement system, and experience of what activities are best funded by the Building Safety Regulator drawing on its fee income, and what functions might be funded through the power for the Secretary of State to make grants.
45. The power to make regulations in clause 13 (6) relates to the procedure to be followed when requesting and directing assistance under clauses 13 and 14, and the way that assistance would be provided by local authorities and Fire and Rescue Authorities.
46. The Government intends that the Building Safety Regulator, local authorities and Fire and Rescue Authorities will work together cooperatively to deliver the new regulatory regime for higher-risk buildings, with local authorities and Fire and Rescue Authorities responding flexibly to operational issues, where the Building Safety Regulator needs assistance. To support this approach, clause 32 and Schedule 3 require the Building Safety Regulator, Fire and Rescue Authorities and local authorities respectively to cooperate in respect of their main functions in respect of higher-risk buildings. Clause 15 will support this collaborative approach by enabling the Building Safety Regulator to prepare guidance on the process to assist local authorities and Fire and Rescue Authorities.
47. Clause 13 also enables the Building Safety Regulator to direct Fire and Rescue Authorities and local authorities in extremis. However, the power to direct is

deliberately designed to include significant safeguards and be used on an occasional basis, as it would be undesirable for authorities with their own local democratic accountability arrangements to be regularly managed by national direction.

48. The power to make regulations ensures that should problems emerge with the process for local authority and Fire and Rescue Authority assistance to the Building Safety Regulator, despite the best efforts of all concerned to cooperate, Ministers can take appropriate remedial action without the Building Safety Regulator having to rely on overly regular use of the power to direct. Regulations could, for example, require that requests for support should be responded to in specific timeframes, or that support must be undertaken by members of staff who meet specific competence requirements.

Justification for procedure selected

49. The power is exercised by the Secretary of State making regulations which are subject to the negative procedure in both Houses of Parliament. The detailed rules for reimbursement and for further provision as to dealing with requests and directions are administrative in character and we consider this level of scrutiny is appropriate for provisions of this type.

**Clause 15(1): Section 13: guidance**

*Power conferred on: the Building Safety Regulator*

*Power exercised by: publication of guidance*

*Parliamentary procedure: None, but the guidance cannot be issued, revised or withdrawn without the consent of the Secretary of State*

Purpose and context

50. Clause 15 subsection (1) enables the Building Safety Regulator to issue guidance to local authorities and Fire and Rescue Authorities about their provision of assistance to the Building Safety Regulator under clause 13 in regulating the new more stringent regulatory regime for higher-risk buildings.

Justification for delegation

51. The purpose of guidance is to aid policy implementation by supplementing the legal framework provided for in clause 13. Amongst other things, the statutory guidance will provide clear information about how the requirement for local authority and Fire and Rescue Authority staff to have appropriate skills, knowledge, experience and behaviours would be interpreted by the Building Safety Regulator, and what reasons the Building Safety Regulator would consider good reasons for not providing assistance requested by the Building Safety Regulator.

52. There is a wide range of statutory guidance issued each year and it is important that guidance can be updated rapidly to keep pace with events and operational good practice through revision by the Building Safety Regulator (and with the consent of the Secretary of State).

### Justification for procedure selected

53. The guidance intended to be issued under this power will be operational in nature and will be informative rather than imposing legal requirements, and as such, is appropriate to be guidance rather than primary or secondary legislation. In addition, the content of such guidance is likely to change over time in the light of the experience of the Building Safety Regulator, local authorities and Fire and Rescue Authorities in working together to deliver the regime, as well as reflecting technical and technological developments. The Secretary of State will be required to consent to the issuing, revising or withdrawal of any guidance under this power. For these reasons, the Government considers that Parliamentary oversight of this guidance is not required.

### **Clause 16(1): Meaning of “building safety risk”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Affirmative procedure*

### Purpose and context

54. The more stringent regulatory regime will regulate buildings in occupation by reference to building safety risks. These are the risks that dutyholders will manage via the Safety Case Report. This clause sets out that fire and structural failure are the main building safety risks. However, the clause allows for other risks to the safety of persons in or about a building arising from the building to be added by prescribing them in regulations subject to the affirmative resolution procedure in both Houses of Parliament, after consulting with the Building Safety Regulator and appropriate persons.

### Justification for delegation

55. Whilst the new regime is focused on the risk of fire and structural failure due to the potentially catastrophic nature of such incidents and the scope set by the Independent Review, in the future, evidence may emerge of significant other risks that have the potential to affect the safety of residents to the same extent. We cannot predict what risks these might be and consequently have taken a power to prescribe new risks in secondary legislation. The Secretary of State must consult with the Building Safety Regulator and appropriate persons before prescribing a new risk. The Secretary of State can also take forward recommendations by the Building Safety Regulator to define new ‘building safety risks’ by the same procedure (make regulations).

### Justification for procedure selected

56. Regulations made under this power will be subject to an affirmative resolution procedure in both Houses of Parliament. If exercised, this power would impact on the legislative regime by inserting a new type of risk aimed at improving the safety of persons in or about higher-risk buildings. Consequently, it is considered



appropriate that the use of the power should be subject to the scrutiny of debates and approvals in both Houses of Parliament.

### **Clause 19(1): Meaning of “higher-risk building”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Affirmative procedure*

#### *Purpose and context*

57. The clause includes a power to define in regulations those buildings which are ‘higher-risk buildings’ and therefore subject to the more stringent regulatory regime. The power to define higher-risk buildings is broad (clause 116(3) allows buildings to be described by reference to height, size, design, use, purpose or other characteristics). This power allows the scope of the regime to remain flexible and that the definition of ‘higher-risk buildings’ can be amended or expanded in line with evidence or experience of the operating regime.

58. The power to define (and amend the definition of) higher-risk buildings is by regulation, which are subject to the affirmative resolution procedure in both Houses of Parliament after consulting with the Building Safety Regulator and appropriate persons.

#### *Justification for delegation*

59. The Independent Review was clear that the Government should have the ability to respond to newly identified building safety risks in different types of buildings, and subsequently broaden the definition of ‘higher-risk buildings’ to take these buildings into account. This clause will therefore enable the Secretary of State, after consultation with the Building Safety Regulator and appropriate other persons, to make regulations to define or amend the definition of ‘higher-risk buildings’ if the evidence supports this change.

60. The Secretary of State can also take forward recommendations by the Building Safety Regulator to define or amend the definition of ‘higher-risk buildings’ by the same procedure.

#### *Justification for procedure selected*

61. Regulations made under this power will be subject to affirmative resolution procedure in both Houses of Parliament. This power defines which buildings will be higher-risk buildings and therefore subject to the more stringent regulatory regime imposed by this Act. It is considered that the use of the power will be of significant interest to the Houses of Parliament and therefore should be subject to the scrutiny of debates and approvals in both Houses of Parliament.

## **Clause 20(1): Modification of Part 4 in relation to certain kinds of higher-risk building**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Affirmative procedure*

### *Purpose and context*

62. This clause includes a power enabling the Secretary of State to modify how Part 4 of the Bill (on higher-risk buildings) applies in relation to a category of higher-risk building. For example, this clause allows the Secretary of State to apply only certain parts of the in occupation regime to some types of 'higher-risk buildings'. Therefore, this power only applies to parts of the building safety enactments in Part 4 of the Bill as they apply to prescribed descriptions of higher-risk buildings.

### *Justification for delegation*

63. The scope of the new regime needs to be guided by the latest evidence on building safety risks, with the necessary flexibility to adjust the scope and application of the regime without needing to amend primary legislation.

64. It is not possible to determine in advance what evidence might come forward over the years as to the types of building that should be subject to stronger regulation. Because the type of future buildings that might be brought into the scope of the regulatory regime is unknown we need a power to apply the regulatory regime flexibly to a way that that is appropriate to the prescribed building.

65. For example, in future, the Secretary of State in consultation with the Building Safety Regulator may decide that it is necessary to bring a different category of building, such as tall office blocks within the definition of a higher-risk building but due to the nature of the occupants it is decided it would not be appropriate to apply the resident engagement requirements of the regime to office workers, and so this power to modify Part 4 of the Bill could be used to switch off that element of the regime for that type of building.

### *Justification for procedure selected*

66. Regulations made under this power will be subject to affirmative resolution procedure in both Houses of Parliament. If exercised, this power would impact on the legislative regime by modifying how Part 4 of the Bill will apply to a new type of building. Consequently, it is considered appropriate that the use of the power should be subject to the scrutiny of debates and approvals in both Houses of Parliament.

## **Clause 25(2): Annual report about information provided under mandatory reporting requirements**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary procedure: Negative Procedure*

### *Purpose and context*

67. The new regulatory regime will require dutyholders to report certain information to the Building Safety Regulator on safety occurrences within higher-risk buildings as part of a Mandatory Occurrence Reporting System. This clause will require the Building Safety Regulator to publish information about the reports it has received from dutyholders through the Mandatory Occurrence Reporting System on an annual basis.

68. Subsection (2) of this clause makes provision for how to identify when information is provided through the Mandatory Occurrence Reporting System. Subsection (2)(a) deals with information provided under the occupation regime in Part 4 of the Bill (on higher-risk buildings).

69. Subsection (2)(b) deals with information provided under the design and build regime in the Building Act 1984. As the mandatory occurrence reporting obligations will be imposed through building regulations, subsection (2)(b) cannot identify them directly. Instead it provides a power to designate the relevant provisions in building regulations.

### *Justification for delegation*

70. As noted above, the mandatory occurrence reporting obligations in design and build will be imposed through building regulations. As these mandatory reporting obligations have not yet been drafted in regulations, subsection (2)(b) cannot identify the relevant obligations directly as the provision will sit in secondary legislation, which may be subject to change, consolidation, amendment and so on. Therefore, subsection (2)(b) contains a power for the relevant obligations to be designated in building regulations.

### *Justification for procedure selected*

71. Regulations under this clause will merely list the appropriate provision of building regulations which imposes the mandatory occurrence reporting requirements and are therefore uncontroversial and we consider it is appropriate they will be subject to the negative procedure.

## **Clause 30(1), (2), (3) and (7): Review by regulator of certain decisions made by it**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

72. This clause enables persons directly impacted by the Building Safety Regulator's decisions to request a review of such decisions. Regulations made under the power in this clause will set out the category of decisions that will be reviewable under this provision. The regulations will also set out the persons who may seek a review, and will detail the administrative requirements (i.e. form, time limit for seeking the review, fees) of such requests.

### Justification for delegation

73. The review regime requires flexibility to define and update the procedural and administrative rules on fees, timings, and the way reviews are made. These are detailed procedural matters and we need flexibility to amend the rules in response to circumstances. We do not consider it would be appropriate to include the detailed review procedural provisions in primary legislation.

74. In addition, some of the decisions which may be reviewed under this clause will be decisions which are only specified in secondary legislation, and so the primary legislation cannot refer to these decisions directly and they must therefore be prescribed.

### Justification for procedure selected

75. Regulations to prescribe under this clause are to be subject to the negative resolution procedure in both Houses of Parliament. The rules will be procedural and detailed rules including forms and time periods for the review. They are non-contentious, and we therefore consider the appropriate level of scrutiny in Parliament for them is the negative procedure.

## **Clause 32: Cooperation and information sharing – Schedule 3: Cooperation and information sharing - paragraph 2(4): “Local authorities” and paragraph 4(2) and (3): “Ombudsmen”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

76. Clause 32 introduces Schedule 3, which creates the powers for reciprocal information sharing between the Building Safety Regulator and other persons in connection with certain statutory functions. Schedule 3 also creates legal duties for the Building Safety Regulator and certain persons to cooperate in connection with certain statutory functions.

77. The duties to cooperate and power to share information are designed to foster a culture of joint working between regulators and other key bodies operating in the same regulatory landscape, to support one other to discharge their statutory functions effectively.

78. The delegated power in paragraph 2 of Schedule 3 enables the Secretary of State to add to the list of local authority functions which the Building Safety Regulator and local authorities must cooperate in respect of and are able to share information in respect of.

79. The delegated power in paragraph 4(2) and (3) of Schedule 3 enables the Secretary of State to specify the information which the relevant ombudsmen, regulator or redress schemes may share with the Building Safety Regulator and vice versa, and to specify the functions in relation to which they may share the information.

#### Justification for delegation

80. The delegated power in Schedule 3 of the Bill allows the Secretary of State by regulations to add to that list of local authority functions, and set out the list of ombudsmen, regulator and redress scheme functions, through regulations and the types of information that may be shared. This reflects that there are a particularly wide range of potential operational interactions between the Building Safety Regulator (notably in relation to its responsibility for regulating higher-risk buildings), and the local authority. The Government does not believe that it can foresee all of the local authority and ombudsmen, other regulators and redress schemes functions where operational experience will demonstrate that cooperation and information sharing between the Building Safety Regulator and the local authority would support effective delivery of those agencies' statutory functions.

81. In addition, there may be changes to the remit or operational practice of the Building Safety Regulator and local authorities and other regulators, ombudsmen and redress schemes over time, which could lead to different functions becoming relevant. This power provides the flexibility to ensure that the Building Safety Regulator and local authorities, other regulators, ombudsmen and redress schemes can share relevant information that would assist with the delivery of their functions and cooperate in that delivery.

82. Local authorities, other regulators, ombudsmen and redress schemes discharge a wide range of functions, some of which are closely related to the functions of the Building Safety Regulator. The Bill introduces a duty to cooperate and a power to share information where the Government is clear that this would be of assistance to both the delivery of local authority and the Building Safety Regulator's functions.

#### Justification for procedure selected

83. Regulations to prescribe under the power in Schedule 3 will be subject to the negative procedure in both Houses of Parliament. Regulations made using this power will identify those operational matters of local authorities which interact with the new building safety regime. Regulations prescribing information and functions in relation to the ombudsmen and Building Safety Regulator, in this clause, will enable consideration of operational matters and an agile response to the same. We consider that the choice of negative procedure provides the appropriate level of

scrutiny in Parliament, including debate if Parliament considers appropriate, in relation to these matters.

**Clause 32: Cooperation and information sharing – Schedule 3: Cooperation and information sharing - paragraph 4(7): “Ombudsmen”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Affirmative procedure*

*Purpose and context*

84. The complaints processes for residents of higher-risk buildings should be strengthened through the provisions in clauses 84 and 85 and secondary legislation setting out the detail and supporting guidance.

85. However, despite best efforts to communicate the new set of processes and being clear on respective roles and remits between the Building Safety Regulator and other organisations, inevitably some complaints will initially end up in the wrong place. This provision places a duty to cooperate on the Building Safety Regulator and other relevant, regulators, ombudsman and redress schemes to enable prompt complaints redirection when that happens together with a commitment to work together on other areas of joint interest such as information sharing and issuing joint guidance.

86. The provision has been set up flexibly to cover all the functions of cooperating organisations to ensure that cooperation can happen wherever it needs to.

*Justification for delegation*

87. This clause creates a formal duty on the Social Housing Regulator, the Housing Ombudsman and the private sector redress schemes (currently two) together with the new homes ombudsman once established to co-operate with the new Building Safety Regulator on areas of common interest and the effective delivery of their functions.

88. It is a mutual duty in that the Building Safety Regulator will be subject to the same in return. Secondary legislation will be used to provide more detail on the coverage of the clause both in terms of the areas for working together and the organisations covered.

89. Areas of required co-operation include but are not limited to: information sharing, effective complaints handling, and other matters of common interest such as the issuing of joint guidance.

90. The current list of organisations covered is as set out in the legislation, but the clause provides the power by which other organisations (ombudsman, regulators or redress schemes) and their functions can be added to the list of those covered or removed if they are no longer providing related services or are repealed. Similarly, the power enables the Secretary of State to make regulations to allow for

when new organisations join the market or for the removal of schemes who no longer wish to deliver these services, or the Secretary of State removes their right to offer the services.

Justification for procedure selected

91. Regulations to add or amend relevant functions to which the duty to co-operate should apply, and to add more organisations to the list of those covered by it, will be subject to the affirmative procedure in both Houses of Parliament. The functions currently covered by the provisions are quite wide to enable flexibility for cooperation between organisations wherever necessary.

92. Similarly, the ability to add organisations such as other existing ombudsman or regulators into the duty is quite a broad power. We consider therefore that the affirmative procedure in both Houses of Parliament is appropriate in these circumstances to enable sufficient parliamentary scrutiny to ensure that any additions are proportionate and justifiable on safety grounds.

**Clause 33(1): Fees and charges**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

Purpose and context

93. Clause 33 empowers the Secretary of State to make regulations to enable fees and charges to be levied by the Building Safety Regulator in connection with the exercise of its functions in Part 2 of the Bill (which includes the Building Safety Regulator's general functions), Part 4 of the Bill (regulating higher-risk buildings in occupation), and the Health & Safety at Work etc Act 1974 (including new section 11A, which enables the Building Safety Regulator to make arrangements to deliver its functions). The power allows for regulations to prescribe the levels of fees and charges and to make provisions for schemes under which charges are fixed; the principles to be followed in setting up schemes; and to enable different levels of fees and charges to be levied for different purposes.

Justification for delegation

94. The Building Safety Regulator will have responsibility for critical functions, including regulating a new regulatory regime in occupation. The Independent Review recommended that the regulator for higher-risk buildings be funded through a full cost recovery approach. It is appropriate that regulations can make provisions for fees to be charged for Building Safety Regulator activities to support this policy objective in respect of higher-risk buildings, and to raise fees where it is appropriate to charge for other functions of the Building Safety Regulator.

95. Given that the regulatory regime for higher-risk buildings in occupation is entirely new, judgement will be needed about how to set fees initially to achieve full cost recovery and avoid making profit. It is appropriate that fees can be adapted over

time to ensure they achieve this policy aim and remain consistent with the principles governing charging set out in HM Treasury's Managing Public Money.

Justification for procedure selected

96. Regulations to prescribe the regulator's fees and charges and to set the principles under which fees may be determined will be subject to the negative procedure in both Houses of Parliament. Regulations made using this power would be administrative in nature. The choice of negative procedure is considered to provide for the appropriate level of scrutiny and opportunity for debate, if desired, without requiring a debate on administrative provisions as a matter of course. In addition, it is consistent with the current procedure for fee-related regulations made under the Building Act 1984.

**Clause 35(1) and (3): Interpretation of Part 2**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

Purpose and context

97. This clause includes a definition of 'building' for the purposes of Part 2 of the Bill (the regulator and its general functions) which is any permanent or temporary building in England. The clause includes the power for the Secretary of State, by regulations, to prescribe types of buildings which are excluded from this definition.

98. The clause also includes the power for the Secretary of State, by regulations, to prescribe that any provision of Part 2 applies also to structures, erections, vehicles or vessels. This provision for the definition of buildings is equivalent to a very similar provision made in section 121 of the Building Act 1984.

Justification for delegation

99. The new regulatory regime will apply initially to higher-risk buildings which contain at least 2 residences, although the power in clause 19 is wide enough to be used in future to apply the regulatory regime to non-residential buildings.

100. As it is not possible to determine which types of buildings could become subject to the regulatory regime in the future, the Secretary of State needs a power to exclude some types of buildings from the definition. For example, if in the future the regulatory regime were applied to tall non-residential buildings we might consider excluding any such building which was on the site of a nuclear installation or a chemical plant installation, as such installations are subject to their own safety regulatory regime.

Justification for procedure selected

101. The powers in this clause are subject to the negative resolution procedure in both Houses of Parliament. We do not envisage using these powers as it is currently



intended that the new more stringent safety regime will be applied to residential buildings. This approach aligns with the procedure to be followed in making regulations under section 121 of the Building Act 1984. Under that Act premises such as small greenhouses, outbuildings (such as summerhouses) in the curtilage of a dwelling and buildings into which people do not usually go are excluded from the definition of building. As neither of these are residential buildings we do not consider we would need to make equivalent provision under this power. We consider it is appropriate for these regulations to be subject to the negative procedure.

**Clause 36: Building control authorities – new sections 91ZB(1) of the Building Act 1984 “The regulator: building control authority for other work” and 91ZC(2), (3) and (5) of the Building Act 1984 “Section 91ZB: supplementary”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

*Purpose and context*

102. Clause 36 amends section 91 of, and inserts new sections 91ZA, 91ZB, 91ZC and 121A into, the Building Act 1984 to set out when the Building Safety Regulator will be the building control authority for building work. New section 91ZB enables the Building Safety Regulator to be the building control authority for work which has a prescribed connection with higher-risk building work, by issuing jointly with the person carrying out the work a ‘regulator’s notice’.

103. We expect to use this power to provide that a regulator’s notice can be issued where there is a development comprising both higher-risk buildings and non-higher-risk buildings on one site. In these circumstances if the person carrying out the work wishes to deal with just one building control authority, the Building Safety Regulator would take this role (if it agrees to do so), as only the Building Safety Regulator can undertake building control work for a higher-risk building.

104. There will be limited, prescribed grounds for a local authority to reject a regulator’s notice and a prescribed time period within which a notice of rejection should be given, otherwise the notice is treated as accepted. The grounds for rejection and the time period for doing so will be prescribed in building regulations, using the powers in subsections (2) and (3) of new section 91ZC.

105. Subsection (5) of new section 91ZC provides powers for building regulations to prescribe the form and content of a regulator’s notice and a local authority notice of rejection, information to be supplied with the notices, and the way notices should be issued.

106. Provisions relating to regulator’s notices mirror to some extent the existing arrangements in section 47 of the Building Act 1984 for the issue of an initial notice by an Approved Inspector to a local authority, in particular that it can only be rejected on grounds prescribed in building regulations and that building regulations can prescribe the form and content of initial notices. The form and content and grounds

for rejection of initial notices are set out in Regulation 10, Form 1 of Schedule 1 and Schedule 2 of the Building (Approved Inspectors) Regulations 2010 (as amended).

#### Justification for delegation

107. The Building Act 1984 already provides for the time period for rejection of, and the form and content of initial notices and public body's notices to be prescribed in building regulations (as mentioned above). This recognised that it was important to have flexibility to set out the detail required to be included, and in particular the exact format in which notices are to be issued, and that this was best done in secondary legislation. The Government considers that this principle holds equally for the grounds of rejection of and form and content of regulator's notices.

108. The grounds for rejection, time period for rejection, and the form and content of a regulator's notices may need to be adjusted in the light of experience with the operation of the new regime. Enabling this to be done through secondary legislation will allow for changes to be made in a timely manner.

109. It is also appropriate to have flexibility in defining the precise circumstances in which a regulator's notice may be given, i.e. the connection that the work must have to higher-risk building work. As described above in the first instance we expect that we will prescribe this to cover non-higher-risk building work taking place on the same development as higher-risk building work, but over time as the new regime matures, we may want to widen (or indeed narrow) the circumstances in which a regulator's notice may be given.

#### Justification for procedure selected

110. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament. We consider this appropriate as the provisions will be largely procedural and uncontroversial and likely to be integrated with other provision in the building regulations related to the form and content of notices. This is also consistent with the existing procedure for building regulations generally, which are made using the negative procedure (see section 1(4) of the Building Act 1984).

### **Clause 37: Building regulations – Schedule 1 to the Building Act 1984**

#### Background

111. Section 1 of, and Schedule 1 to, the Building Act 1984 provides powers to make building regulations which set out the technical and procedural matters relating to building work. Historically, before the requirements for building control were standardised on a national basis by Building Acts, these technical and procedural matters would have been set out in local authority byelaws.

112. Clause 37 of the Bill amends Schedule 1 to the Building Act 1984 to expand and clarify the types of technical and procedural provisions which can be made under the broad regulation-making power in section 1 of the Act. In particular, the new provisions inserted into Schedule 1 provide more detail of the matters which may

be covered in building regulations than the current powers which provide very little detail. Consequently, paragraphs (2), (3), (4,) (4A), and (4B) of Schedule 1 will be repealed.

113. The new provisions being inserted into Schedule 1 by clause 37 are described separately in the following paragraphs.

New paragraphs 1A of Schedule 1 to the Building Act 1984: “Procedural requirements etc: general” and 1B “Applications for building control approval”

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

*Purpose and context*

114. Paragraph 1A provides that building regulations may make provision about the procedure which may or must be followed in relation to work or other matters to which building regulations are applicable (e.g. material change of use). It then goes on to give more detail about the sort of procedural provision that may be made, including provision about applications to building control authorities (i.e. local authorities and the Building Safety Regulator), certificates, notices, and consultation with prescribed persons as part of these procedures.

115. Paragraph 1A also allows building regulations to confer powers on building control authorities to require persons to notify them of specified matters. We expect that we will use this power to allow building control authorities to require developers to notify them when they have reached particular stages of work, so that the building control authority can inspect that work (e.g. when the developer has finished the foundations, the authority will likely want to inspect the foundations before they are covered up).

116. Regulations under paragraph 1A can also make provision with regard to how applications are to be granted or refused (including when they are deemed granted or deemed refused, e.g. if the building control authority does not make a decision on the application within the prescribed time period), and the effects of the granting of an application and of the issue of a certificate.

117. Paragraph 1B gives more detail about a particular type of application made to building control authorities, which is an application for building control approval. This replaces the current ‘deposit of full plans’ procedure. Paragraph 1B deals with the matters which may be covered by this approval. Providing building control authorities, the ability to set requirements when granting applications for building control approval, such as requiring the submission of revised versions of documents, setting out that work cannot proceed beyond a certain stage without further approvals, and that applications for the approval of design changes which occur during construction will be needed.

118. Paragraph 1B(5) sets out that in prescribed applications for building control approval, intended to only be for refurbishment applications, applicants will be able

to submit plans and the prescribed documents that they consider appropriate to the proposed work. Building control authorities will have the ability to request further information and refuse applications where the applicant fails to provide this.

#### Justification for delegation

119. The Independent Review set out in some detail the procedural arrangements which should be put in place for increased regulatory oversight of higher-risk buildings, in particular what are referred to as “Gateways”, i.e. more stringent versions of the current procedural requirements. These procedural requirements will need to be specified in some detail to implement those recommendations. Providing for this to be done in secondary legislation provides more flexibility for how those details can be set out. It also provides the opportunity for consultation with affected bodies. Part 3 of the Building Regulations 2010 already sets out detailed procedural requirements.

120. It is likely that over time, changes may need to be made to procedural requirements to reflect the experience of operating new procedures such as the Gateways. Having the powers to make changes in secondary legislation will improve the Government’s ability to promulgate any necessary changes in a timely manner, to ensure that procedures remain fit for purpose.

121. As well as implementing the recommendations in the Independent Review, the Government envisages changes will need to be made to Part 3 of the Building Regulations 2010 to update the procedural requirements therein, which will apply to non-higher-risk buildings. The Government believes that there will be considerable value in consolidating all the procedural requirements relating to building control applications and approvals in secondary legislation, as this would enable users to navigate more easily the legislative requirements which affect them.

#### Justification for procedure selected

122. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament. We consider this is appropriate as the provisions will be largely procedural, relating to the administration of relevant procedures, and likely to be integrated with other provisions in the building regulations related to procedural matters. This procedure is consistent also with the existing procedure for building regulations generally, which are made using the negative procedure (see section 1(4) of the Building Act 1984).

New paragraph 1C of Schedule 1 to the Building Act 1984: “Certificates: approved schemes”

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

123. New paragraph 1C, to be inserted into Schedule 1 to the Building Act 1984, provides more detail on matters relating to approved schemes for the issue of certificates, pursuant to paragraph 1A(2)(c). It is envisaged that to be able to give a certificate regarding compliance with building regulations, a person will need to be a member of an approved scheme, similar to current arrangements set out in Regulations 20 and 20A of the Building Regulations 2010 (as amended). Paragraph 1C makes provision for building regulations to set out procedures for the approval of schemes, their suspension or withdrawal, and the time periods for approvals.

124. In conjunction with new paragraph 1A(2)(c) and new paragraph 1A(3)(d), this new power will replace existing powers in paragraphs 4 and 4A of Schedule 1 to the Building Act 1984.

### Justification for delegation

125. Arrangements for self-certification schemes and third-party certification schemes are already provided for in building regulations (regulations 20 and 20A of the Building Regulations 2010 (as amended)). The Government would expect to use the new powers to replace Regulations 20 and 20A.

126. The Government envisages that schemes for persons issuing certificates will need to meet conditions of approval before they can be approved and may also be subject to limitations on their approval. For example, a scheme may or may not be approved to issue certificates in relation to work on higher-risk buildings. The arrangements for doing this, and for any procedures relating to the suspension or withdrawal of approvals, are best set out in secondary legislation given the detail which may need to be included. This also gives the opportunity for consultation on the approval arrangements.

127. It is likely that over time changes may need to be made to these arrangements for approving schemes to reflect the experience of operating them. Having the powers to make changes in secondary legislation will improve the Government's ability to promulgate any necessary changes in a timely manner, to ensure that procedures remain fit for purpose.

### Justification for procedure selected

128. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament. We consider this is appropriate as the provisions will be largely procedural, relating to the system for administering scheme approvals. This procedure is consistent also with the procedure for building regulations generally, which are made using the negative procedure (see section 1(4) of the Building Act 1984).

New paragraph 1D of Schedule 1 to the Building Act 1984: “Obtaining, keeping and giving information and documents”

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

129. This paragraph inserts new provisions into Schedule 1 to the Building Act 1984 to provide strengthened powers relating to information provision, as the current provisions are considered to be insufficient to ensure there is sufficient information about higher-risk buildings in scope of the new regime for the maintenance of building safety. The new paragraph 1D(1) provides a power for building regulations to make provisions about information or documents that can be required under the regulations.

130. New paragraph 1D(2)(a) sets out that the building regulations may impose standards for the management and storage of information or documents (the prescribed standards). New paragraph 1D(2)(b) sets out that the building regulations may impose requirements about how the information or documents are kept up to date. This power enables the Secretary of State to require standards that ensure the information can be easily used to maintain building safety as the requirements will ensure the information is accessible, secure, usable and up to date.

131. New paragraph 1D(2)(c) allows building regulations to confer on building control authorities or other prescribed persons the power (in prescribed circumstances) to require a person to give information to them. This power enables the Secretary of State to define the prescribed person and prescribed circumstances and ensures regulators will have the ability to require additional information.

### Justification for delegation

132. The Secretary of State needs the power to specify the prescribed standards that will set out how the information and documents (required under the building regulations) will need to be stored and managed by the dutyholder.

133. The Independent Review was clear that at present building information is often incomplete or inaccurate and there are insufficient rules on the creation, maintenance and handover of information. The lack of information has undermined building safety. The new regime will make more stringent requirements on information production, management and handover. This will be done through clear prescribed standards. It is likely that over time changes may need to be made to the prescribed standards to reflect technological and procedural developments in digital and information management technology. It is also likely that the definition of what ‘up to date’ means may alter as digital and construction technology develops. This delegation is required to allow these changes to be made quickly via regulations.

134. The Secretary of State also needs the power to define who is a prescribed person for the purposes of requiring information and defining the prescribed circumstances when this requirement can be imposed.

135. We also intend to use the power to require dutyholders to report information about safety incidents taking place during building work, as part of the Mandatory Occurrence Reporting System. The information that must be reported will be a list of incidents specified in secondary legislation. Developments in the Building Safety Regulator's understanding of safety risks as well as changes to safety practices mean that some flexibility will be needed to change the prescribed information required over time.

#### Justification for procedure selected

136. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament. We consider this is appropriate as the provisions will be largely procedural. This procedure is consistent also with the procedure for building regulations generally, which are made using the negative procedure (see section 1(4) of the Building Act 1984).

New paragraph 1E of Schedule 1 to the Building Act 1984: "Reporting requirements: duty to establish and operate system"

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

#### Purpose and context

137. The new paragraph 1E applies where building regulations made by virtue of paragraph 1D provides that in prescribed circumstances a prescribed person must give prescribed information to the Building Safety Regulator. Paragraph 1E(2) provides that building regulations may require a prescribed person to establish and operate a system to facilitate the giving of the information to the Building Safety Regulator.

138. Paragraph 1E is intended to be used to require Principal Contractors and Principal Designers to establish and operate a system of mandatory occurrence reporting according to requirements that will be set out in secondary legislation.

#### Justification for delegation

139. Flexibility is required when setting out the requirements for the Mandatory Occurrence Reporting System because technological and digital developments, as well as best practices for safety, will likely cause the requirements regarding the system for collecting and submitting occurrences to change over time.

### Justification for procedure selected

140. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament. We consider this is appropriate as the provisions will be largely procedural and technical. This is consistent also with the procedure for building regulations generally, which are made using the negative procedure (see section 1(4) of the Building Act 1984).

New paragraph 1F of Schedule 1 to the Building Act 1984: “Form and content of documents etc”

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

141. Where building regulations provide that any document may or must be given, the new paragraph 1F(1) provides a power to make provision regarding the form and content of such documents, the information and documents that must accompany it, and the way that the documents must be given. Paragraph 1F(2) further provides that where building regulations provide that any information (not in the form of a document) may or must be given, they may make provision about the way in which it is to be given.

142. New paragraph 1F(3) sets out that building regulations may provide that the matters set out in 1F(1) and 1F(2) can be specified in a direction made and published in accordance with the regulations. We expect that we will use this power to enable the Building Safety Regulator to specify how it would like to be provided with certain information; for example, mandatory occurrence reports will probably be provided to the Building Safety Regulator through an online portal.

143. New paragraph 1F(4) sets out that building regulations can provide that in prescribed applications, intended to be used for refurbishment applications only, applicants must provide prescribed documents as they consider appropriate, and that further information or documents can be required by the building control authority. It also sets out that such applications can be refused if a prescribed document is not provided to the building control authority on request.

### Justification for delegation

144. The Independent Review made recommendations for additional prescribed documents to be a mandatory requirement for building control applications for higher-risk buildings (Gateways and refurbishments), and for increased regulatory oversight. These documents are to demonstrate that appropriate building safety considerations are made before construction commences, and that these considerations continue to be in place during construction to ensure that the completed building is safe to occupy.



145. The form, content and accompanying materials of the prescribed documents will need to be specified and detailed to ensure minimum standards are met, provide clarity about what the requirements are, and to ensure that the information is accessible to building owners to enable them to effectively manage the building in use.
146. New paragraph 1F(4) is intended to be used for refurbishment applications in higher-risk buildings, to ensure proportionality to scope of proposed works as proposed works can be hugely variable, and be resident or building owner led, for example work may be contained within a flat, or be to the common parts or external walls of a building. It will enable the Building Safety Regulator to request further information about a proposed refurbishment if the Building Safety Regulator has safety concerns, and for the Building Safety Regulator to refuse the application if further information is not provided.
147. New paragraph 1F will also be used for the submission of mandatory occurrence reports to ensure that the content of a report includes the necessary information for the Building Safety Regulator to identify the relevant safety risk. Some flexibility is necessary to ensure that the technical information required in reports is kept up to date. For example, new building risks may develop over time, and the information to be submitted to the Building Safety Regulator may therefore need to change.
148. Regulations will set out the form of the documents and how the documents should be submitted to the Building Safety Regulator. Provisions are subject to change over time to accommodate developments in methods of assessments, technological changes, and emerging risks, and require flexibility that is not appropriate for primary legislation.
149. Having the powers to make changes in secondary legislation will improve the Government's ability to promulgate any necessary changes in a timely manner, to ensure that procedures remain fit for purpose.

*Justification for procedure selected*

150. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament. We consider this is appropriate as the provisions will be largely procedural building regulations related to the form and content of prescribed documents and information. This is consistent with the procedure for building regulations generally, which are made using the negative procedure (see section 1(4) of the Building Act 1984).

New paragraph 1G of Schedule 1 to the Building Act 1984: "Inspection, testing etc"

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

151. Paragraph 1G, to be inserted into Schedule 1 to the Building Act 1984, provides powers for building regulations to make provision relating to the testing and sampling of work, and for prohibiting the covering up of work within a prescribed time period after a specified event, and the cutting into, laying open or pulling down of work in order to inspect, test or sample it.

152. It replaces the existing powers in paragraphs 2(d) and 2(e) in Schedule 1 which have been used to make Regulations 45 to 46 of the Building Regulations 2010 (as amended) and Regulation 8(1) of the Building (Approved Inspector) Regulations 2010 (as amended). Regulation 16(2) of the Building Regulations 2010 (as amended) prohibits work from being covered up unless notice has been given to a local authority of their intention to start that work.

### Justification for delegation

153. Provision to allow for registered building control approvers to test and inspect work and take samples already appears in paragraphs 2(d) and (e) of current Schedule 1, as described above. The proposed new powers are consistent with the existing powers used to make those regulations but provide further detail at paragraph 1G(2).

154. Arrangements for testing and sampling, or for prohibiting the covering up of work, may require detailed procedures to be put in place (see for example Regulation 16(2) of the Building Regulations 2010 (as amended)) which are more appropriate for secondary legislation. Secondary legislation also provides more flexibility in making any changes to relevant procedures in the light of experience.

### Justification for procedure selected

155. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament. Building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and the Government believes that it is appropriate to maintain this procedure for regulations made under clause 37, in order to maintain consistency and because their content will be largely procedural.

New paragraph 1H of Schedule 1 to the Building Act 1984: “Applications to building control authorities: extension of period by agreement”

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

156. Paragraph 1H, to be inserted into Schedule 1 to the Building Act 1984, provides powers for building regulations to make provision for a building control authority,

with the agreement of the applicant, to extend a prescribed time period within which an application must be decided.

Justification for delegation

157. Building control authorities must make decisions on applications for building control approvals within statutory timetables. However, there will be occasions when the complexity of the building plans will mean that it will not be possible to assess the plans and other documents, and reach a decision, within the statutory timetable.

158. There will need to be a flexible arrangement for the building control authority to be able to agree with the applicant an extension to the timetable, which is most suitably provided for in secondary legislation.

Justification for procedure selected

159. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament. Building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and the Government believes that it is appropriate to maintain this procedure for regulations made under clause 37 in order to maintain consistency and because their content will be procedural.

New paragraph 11 of Schedule 1 to the Building Act 1984: “Appeals”

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

Purpose and context

160. The new paragraph 11 provides a power for building regulations to make provision for and in connection with appeals in respect of decisions under Parts 1, 2 and 2A of the Building Act 1984. These appeals may be made to the Building Safety Regulator or the First-tier Tribunal; where the appeal was initially to the Building Safety Regulator, there will be a further right of appeal to the First-tier Tribunal against the Building Safety Regulator’s decision.

161. The regulations will set out the category of decisions that will be appealable. They may make provision for the grounds of appeal, period in which to bring an appeal, way in which an appeal must be made, and fees for appeals. The regulations may confer on the Building Safety Regulator or First-tier Tribunal a power, on determining an appeal, to give directions for giving effect to the decision – for example, this might be a direction to a local authority to grant a particular application.

162. In relation to appeals to the Building Safety Regulator, building regulations may confer on the Building Safety Regulator a power to decide what kind of procedure to adopt – for example, the Building Safety Regulator might usually consider

appeals on the papers, but may sometimes decide to have a hearing. The regulations may also give the Building Safety Regulator power to deal with the costs of an appeal.

Justification for delegation

163. This clause enables the Secretary of State to make provision such that persons affected by decisions taken under the Building Act 1984 and building regulations will be able to appeal.

164. Regulations will set out the category of decisions that will be appealable. Regulations will also make provisions about the grounds, period, manner, and costs of the appeal. The regulations may also set out general procedural matters in regard of the appeal. These provisions are subject to change over time and require flexibility that is not appropriate for primary legislation.

Justification for procedure selected

165. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament. We consider this is appropriate as the provisions will be largely procedural. This is consistent with the existing procedure for building regulations generally, which are made using the negative procedure (see section 1(4) of the Building Act 1984).

**Clause 38: Dutyholders and general duties – new paragraph 5A of Schedule 1 to the Building Act 1984: “Appointed persons”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

Purpose and context

166. This clause will amend Schedule 1 to the Building Act 1984, by the addition of paragraph 5A, appointed persons, to better identify and hold to account those participating in the design and construction of new buildings, and the refurbishment of existing buildings.

167. The clause creates a power in paragraph 5A to require appointments to be made in relation to any work under building regulations, to make provisions about the nature of the appointment (including the appointer, the appointee and the term of the appointment), and determine situations where an appointment is deemed to have been made.

Justification for delegation

168. Current legislation places duties on those doing, or intending to do, the work. This clause recognises that all involved in the construction and design process have duties, responsibilities and functions. It is appropriate to have a delegated power as

operational experience may make it necessary to change precisely how the dutyholders are defined, to ensure that duties are imposed on the right people.

Justification for procedure selected

169. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament. Building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and the Government believes that it is appropriate to maintain this procedure for regulations made under clause 38, in order to maintain consistency. In addition, regulations made under this paragraph will be procedural regulations about how appointments are to be made, and so we consider the negative procedure provides the appropriate level of Parliamentary scrutiny.

**Clause 38: Dutyholders and general duties – new paragraph 5B of Schedule 1 to the Building Act 1984: “General duties”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

Purpose and context

170. This clause amends Schedule 1 to the Building Act 1984, by the addition of paragraph 5B, general duties, to hold to account those participating in the design and construction of new buildings, and the refurbishment of existing buildings, ensuring that when buildings are designed, constructed or refurbished, all dutyholders, including existing dutyholders identified in the Construction (Design and Management) Regulations 2015, will have formal responsibilities for compliance with building regulations.

171. The clause creates a power in paragraph 5B to impose duties on relevant persons throughout the design and construction phase of the project. These dutyholders include those commissioning or undertaking work as well as those appointed, controlling or managing the work.

Justification for delegation

172. When buildings are designed, constructed or refurbished, all those participating play an important role in ensuring the safety of the finished structure. This clause recognises that those involved have duties, responsibilities and functions, dependent on the scale and complexity of the project.

173. It is appropriate to have a delegated power as operational experience may make it necessary to change precisely how the dutyholders are defined, to ensure that duties are imposed in the right people, and to change exactly how the duties are framed to ensure proper accountability.

### Justification for procedure selected

174. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament. Building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and the Government believes that it is appropriate to maintain this procedure for regulations made under clause 38, in order to maintain consistency. Regulations under this paragraph will create operational duties on dutyholders, including duties like cooperating and planning work, which may need to be changed speedily depending on the operational experience of local authorities and the Building Safety Regulator. The negative procedure allows for this to happen, with the option of a higher degree of scrutiny through a debate if Parliament considers it necessary.

### **Clause 39: Industry competence – new paragraph 5C of Schedule 1 to the Building act 1984: “Competence requirements”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

175. This clause amends Schedule 1 to the Building Act 1984 by inserting a new paragraph 5C on ‘Competence requirements’. These amendments create powers to prescribe in building regulations the competence requirements on appointed persons and other prescribed persons. The intention for this provision is to ensure that everyone doing design work or building work is competent to do their work in a way that ensures compliance with building regulations.

176. We will use the power to impose competence requirements on the design and build dutyholders (Contractors, Designers, Principal Contractor, Principal Designer) as well as other persons carrying out work.

### Justification for delegation

177. Building regulations currently have minimal provisions relating to how work should be carried out. The intention is to set out more specific requirements in relation to competence. These requirements need to be suitable to the roles and the scope of work they are engaged to carry out, and therefore may need to be updated to reflect any future changes to building regulations, or developments in the construction industry.

178. The power also allows for the building regulations to require that where the appointed person is a body (e.g. a company) they must appoint a named individual to manage its functions as an appointed person.

### Justification for procedure selected

179. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament. Building regulations are currently subject to the negative

resolution procedure (see section 1(4) of the Building Act 1984) and the Government believes that it is appropriate to maintain this procedure for regulations made under clause 39, in order to maintain consistency.

180. In addition, we expect that the competence requirements may be technical in nature and do not justify a more detailed level of Parliamentary scrutiny.

**Clause 40: Lapse of building control approval etc – new sections 32(5) and 53A(7) of, and paragraph 4A(7) of Schedule 4 to the Building Act 1984**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

*Purpose and context*

181. Clause 40 inserts new sections 32 and 53A into the Building Act 1984 and new paragraph 4A of Schedule 4 to the Building Act 1984 to provide for the automatic lapse of an approval of deposited plans, of an initial notice or a public body's notices, and the automatic rescinding of an acceptance of a plans certificate, if work has not commenced after three years.

182. New powers are provided, in new sections 32(5), 53A(7) and paragraph 4A(7) to Schedule 4, for building regulations to set out provision as to when work is to be regarded as having commenced.

*Justification for delegation*

183. It is important to be clear as to what constitutes commencement of work, and therefore whether a building control approval, initial notice etc remains valid. However, a number of different construction activities may be regarded as the commencement of work. The term will therefore need careful definition and may require a number of different construction activities to be listed. Providing for this level of detail is not appropriate in primary legislation.

184. Enabling this to be done through secondary legislation provides more flexibility in how activities could be defined, and in particular to make any refinements in the light of experience. It will also allow for consultation on the detail as new regulations are developed.

*Justification for procedure selected*

185. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament. We consider this is appropriate as the content of the regulations will be technical in nature and uncontroversial. This procedure is consistent also with the existing procedure for building regulations generally, which are made using the negative procedure (see section 1(4) of the Building Act 1984).

**Clause 41: Determination of certain applications by Secretary of State – new section 30A(1), (3), (6), (7), (8) of the Building Act 1984**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

*Purpose and context*

186. Clause 41 inserts new section 30A into the Building Act 1984. This provides applicants with the ability to apply to the Secretary of State for a decision on certain applications, where the Building Safety Regulator has failed to make a decision on the application within prescribed timescales and there is no agreement between the Building Safety Regulator and applicant to extend the timescale. The applications to which this section applies will be set out in building regulations.

187. A power to make provision about these applications in building regulations is set out in subsection (6). Subsection (7) provides further detail regarding the provision that can be set out in building regulations, covering procedures about making applications under this clause and how they are to be determined, notification requirements, and imposing duties on the Building Safety Regulator. Provision can also be made to enable the Secretary of State to appoint a person to determine the application and confer functions on the appointed person. Subsection (8) clarifies that building regulations may prescribe the form and content of documents, what needs to accompany them, and how they are given.

*Justification for delegation*

188. This clause enables building regulations to make provision such that persons affected by the Building Safety Regulator failing to make a decision on a prescribed application within prescribed timescales, and failing to agree an extension, have a route to get a decision on their application made.

189. Regulations will set out the types of applications that can use this route when there is a non-determination. The regulations may also set out general procedural matters in regard of the application. These provisions are subject to change over time and require flexibility that is not appropriate for primary legislation.

*Justification for procedure selected*

190. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament. Building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and the Government believes that it is appropriate to maintain this procedure for regulations made under clause 41, in order to maintain consistency, and because the content of the regulations will be technical and procedural in nature.



**Clause 42: Enforcement – new section 35B(1) and (8) of the Building Act 1984:  
“Compliance notices”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

*Power conferred on: Building Safety Regulator*

*Power exercised by: Notice*

*Parliamentary procedure: No procedure*

*Purpose and context*

191. New section 35B provides an additional enforcement tool for building control authorities to use in enforcing compliance with building regulations, beyond the existing methods in section 35 of the Building Act 1984 (prosecution for non-compliance with building regulations) or section 36 of the Building Act 1984 (requiring building owners to put right non-compliant work).

192. A compliance notice under new section 35B will be able to require a person who has carried out non-compliant work to rectify it at their own expense; failure to do this could result in either a stop notice (see new section 35C below) or prosecution, with a maximum penalty of an unlimited fine or two years' imprisonment. These notices are case specific sanctions, exercised on the basis of evidence available to the Building Safety Regulator, so cannot be provided for through legislation (whether primary or secondary).

193. Subsection (8)(a) allows the Secretary of State to prescribe provisions of building regulations in respect of which a compliance notice cannot be given.

*Justification for delegation*

194. The existing offence of breaching building regulations in section 35 of the Building Act 1984 includes a power to exclude certain provisions of those regulations from criminal liability, which has been used to make Regulation 47 of the Building Regulations 2010.

195. We are making provision here to ensure that there is consistency between the different enforcement provisions – or to make different provision e.g. for specific issues, enabling the use of compliance notices under new section 35B but not prosecution under section 35 or stop notices under new section 35C, if a different approach is justified. Compliance notices are case specific sanctions, exercised on the basis of evidence available to the Building Safety Regulator, so cannot be provided for through legislation (whether primary or secondary).

*Justification for procedure selected*

196. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament. Building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and the

Government believes that it is appropriate to maintain this procedure for regulations made under this clause in order to maintain consistency. The content of these regulations is expected to be uncontroversial, as with current regulation 47 of the Building Regulations 2010 (as amended).

**Clause 42: Enforcement – new section 35C(1) of the Building Act 1984: “Stop notices”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

*Power conferred on: Building Safety Regulator*

*Power exercised by: Notice*

*Parliamentary procedure: No procedure*

*Purpose and context*

197. New section 35C provides an additional enforcement tool for building control authorities to use in enforcing compliance with building regulations, beyond the existing methods in section 35 (prosecution of those doing non-compliant work) or section 36 (requiring building owners to put right non-compliant work). A stop notice under new section 35C will require a person to stop work on a site until a breach is remedied or steps taken; failure to do this could result in prosecution, with a maximum penalty of an unlimited fine or two years' imprisonment. These notices are case specific sanctions, exercised on the basis of evidence available to the Building Safety Regulator, so cannot be provided for through legislation (whether primary or secondary).

198. Subsection (1)(a) will enable the Secretary of State to specify in regulations certain provisions or requirements of the building regulations under which the building control authority will be able to issue a stop notice without first either issuing a compliance notice or there being a risk of serious harm (as defined in subsection (2)). This power is intended to enable the Building Safety Regulator to stop work immediately on sites where Gateway requirements have been breached. The Gateway requirements will be set out in building regulations made under new paragraphs 1A and 1B of Schedule 1 to the Building Act 1984, which are inserted by clause 37 of this Bill.

*Justification for delegation*

199. Subsection (1)(a) will enable the Secretary of State to specify in regulations certain provisions or requirements of the building regulations under which the building control authority will be able to issue a stop notice without first either issuing a compliance notice or there being a risk of serious harm (as defined in subsection (2)). This power is intended to enable the Building Safety Regulator to stop work immediately on sites where Gateway requirements have been breached. The Gateway requirements will be set out in building regulations made under new paragraphs 1A and 1B of Schedule 1 to the Building Act 1984, which are inserted by clause 37 of this Bill. Stop notices are case specific sanctions, exercised on the

basis of evidence available to the Building Safety Regulator, so cannot be provided for through legislation (whether primary or secondary).

Justification for procedure selected

200. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament. Building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and the Government believes that it is appropriate to maintain this procedure for regulations made under this clause, in order to maintain consistency. These regulations will be operational, and the negative procedure provides the opportunity for Parliamentary scrutiny through debate if Parliament considers that appropriate, without requiring such scrutiny as a matter of course.

**Clause 42: Enforcement – new section 35D(1), (2) and (3) of the Building Act 1984: “Compliance and stop notices: supplementary”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

Purpose and context

201. New sections 35B and 35C of the Building Act 1984 described above set out new enforcement tools for building control authorities to address and require the rectification of breaches of the building regulations.

202. New section 35D enables the Secretary of State to make regulations setting out detail around how building control authorities must use compliance notices, including what those notices must specify, how they are given, whether anyone else must be notified, and how they can be amended.

Justification for delegation

203. The regulations that will be made under new section 35D are likely to be detailed and procedural and, in line with similar material in other regimes, we consider it appropriate to set out that detail in secondary legislation. The content of the regulations is likely to be uncontroversial but may need to be amended in the light of experience in operating the new regime. As such, we consider it appropriate to set this material out in secondary rather than primary legislation.

Justification for procedure selected

204. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament. Building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and the Government believes that it is appropriate to maintain this procedure for regulations made under this clause, in order to maintain consistency. In addition, as described the material is likely to be detailed, extensive and uncontroversial, so we consider that negative procedure provides the appropriate level of Parliamentary scrutiny.

## **Clause 42: Enforcement – new section 39A(6) to the Building Act 1984: “Appeals against compliance notices and stop notices etc”**

*Power conferred on: the First-tier Tribunal*

*Power exercised by: Direction*

*Parliamentary procedure: None*

### *Purpose and context*

205. This power enables the First-tier Tribunal, on application, to direct that a stop notice is of no effect, pending the determination of the appeal against the notice.

206. This power is not legislative in character and is therefore mentioned only for information.

## **Clause 44: Regulation of building control profession**

### *Background*

207. This clause amends the Building Act 1984 by inserting a new Part 2A into that Act. The Part includes provisions to create a unified professional and regulatory structure for building control. Individuals in both the private and public sector who wish to be registered building inspectors must in the future meet the same minimum standard criteria to be placed on the register. Registered building inspectors will be able to provide advice to building control authorities or registered building control approvers, in line with the type of registration they hold. Current Approved Inspectors or other organisations wishing to undertake building control work will also have to meet minimum criteria to become registered as building control approvers, becoming subject to the oversight of the Building Safety Regulator.

208. The new Part 2A includes the following delegated powers:

- a. Sections 58B and 58N – a power for the Secretary of State, by regulations, to prescribe how long building inspector and building control approver registrations last and to prescribe other matters which must be included in the public registers;
- b. Section 58C and 58O– a power for the Building Safety Regulator to specify the manner, form etc of applications for registration as building inspectors;
- c. Sections 58E, 58G, 58H and 58I– a power for the Building Safety Regulator to issue a code of conduct for registered building inspectors; and a power for the Building Safety Regulator to set the procedure for investigations into inspectors’ misconduct and to impose disciplinary orders on inspectors or approvers;
- d. Sections 58Q, 58S, 58T, 58U, 58Y, 58Z, 58Z2, 58Z3, 58Z4 and 58Z5 – a power for the Building Safety Regulator to issue professional conduct rules for registered building control approvers; set the procedure for investigations for breaches of the rules; impose sanctions for breach of the rules; issue operational standards rules for local authorities and register building control approvers; direct authorities/registered building control approvers to issue reports; set the procedure for investigations for breaches of the rules; and issue improvement notices and serious contravention notices for breach of the rules; and for continuing failure to meet standards and cancel registration of registered building

- control approvers or recommend the transfer of local authority's building control functions to another authority; and
- e. Sections 58T, 58U, 58Z3 and 58Z4 – a power for the Secretary of State, by regulations, to prescribe the cases where the Building Safety Regulator sends a copy of a sanctions decision to every local authority.

New section 58B of the Building Act 1984: "Register of building inspectors"

New section 58N of the Building Act 1984: "Register of building control approvers"

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

209. Sections 58A to 58C set out the requirements for the registration of individual building inspectors by the Building Safety Regulator, or the body it designates. Sections 58M to 58P make equivalent provision for registered building control approvers.

210. Sections 58B(5) and 58N(4) provide powers for the Secretary of State to set the length of time registrations are valid. The registration system will be based on validation and revalidation of competence to ensure maintenance of competence is an ongoing process.

211. Sections 58B and 58N also provide powers for the Building Safety Regulator to set out any additional matters that the register must record.

### Justification for delegation

212. We will need to consult with the Building Safety Regulator as part of the operationalisation of the registration process before we make regulations prescribing the length of time which is appropriate. The decision to provide delegated powers in section 58B(5) and 58N(4) instead of on the face of the Bill follows from the conclusion that this should allow for the flexibility for the registration period to be amended quickly if emerging issues show the length of registration needs to be changed. We believe that this is appropriate as the decision is primarily procedural and administrative.

213. The principal matters recorded on the two registers are set out on in section 58B(5) and 58N(4) ie name and business address, type of work the persons is registered to carry out, conditions attached to the registration, period of registration. We expect the Building Safety Regulator to consult with the sector as part of the operationalisation process, this consultation will enable the Building Safety Regulator to ensure the registers are the most useful documents they can be. The decision to provide a reserve delegated power in sections 58B(6) and 58N(5) rather than include all matters on the face of the Bill follows from the conclusion that this allows for the flexibility for additional matters to be required to be recorded on the register if emerging issues demonstrate that is required. We believe that this is appropriate as the decision is primarily procedural and administrative in nature.

### Justification for procedure selected

214. The power to prescribe the period for the length of registration is exercised by regulations which are subject to the negative resolution procedure in both Houses of Parliament. We consider that as the length of a registration is a procedural and administrative matter that this is the appropriate level of scrutiny.

215. The power to prescribe other matters which must be included in the public register is exercised by regulations which are subject to the negative resolution procedure in both Houses of Parliament. We consider that requiring further matters to be included on the public registers, beyond the list of matters set out in sections 58B(5) and 58N(4), is of an administrative nature and that this is the appropriate level of scrutiny for such a power.

New section 58C of the Building Act 1984: “Application for registration as building inspector”

New section 58O of the Building Act 1984: “Application for registration as building control approver”

*Power conferred on: Building Safety Regulator*

*Power exercised by: procedure, forms etc issued by the Building Safety Regulator*

*Parliamentary procedure: None*

### Purpose and context

216. Sections 58A to 58C of the Building Act 1984 set out the requirements for the registration of individual registered building inspectors by the Building Safety Regulator, or the body it designates (sections 58M to 58P make equivalent provision for registered building control approvers).

217. Sections 58C and 58O provide powers for the Building Safety Regulator to set out the procedure to be followed and the forms to be used when a person applies for registration as a building inspector or building control approver.

### Justification for delegation

218. Under sections 58C and 58O the Building Safety Regulator must set out the procedure and forms for applying to become a registered building inspector or registered building control approver. The decision to provide a delegated power rather than include detailed procedural provisions and the application forms on the face of the Bill or in secondary legislation as the procedures and forms are likely to be detailed and long, and the Regulator will need the flexibility to amend them in response to circumstances emerging in the sector. We consider this delegation is appropriate as the detailed procedures and application forms are administrative in nature and not sensibly included in legislation.

### Justification for procedure selected

219. The power to set out the procedural rules for applications and the application forms themselves is exercised by the Building Safety Regulator publishing a

document setting these out. The existing application process for becoming an Approved Inspector under section 49 of the Building Act 1984 does not set out the application forms or the procedures for considering applications in the Act or in secondary legislation. As the procedures for applications and corresponding forms are technical and administrative in nature, we consider it is appropriate for such a power not to be subject to scrutiny in Parliament.

New section 58E of the Building Act 1984: “Code of conduct”

New section 58G of the Building Act 1984: “Professional misconduct investigations”

New sections 58H and 58I of the Building Act 1984: “Sanctions for professional misconduct” and “Interim suspension for suspected serious professional misconduct”

*Power conferred on: the Building Safety Regulator*

*Power exercised by: Code of Practice, misconduct procedures*

*Parliamentary procedure: None*

### Purpose and context

220. Sections 58D to 58L set out more detail on the ongoing regulation of registered building inspectors, including section 58E which requires that the Building Safety Regulator publish a code of conduct for inspectors. The Building Safety Regulator has the power to seek information from registered building inspectors. It will also be able to take disciplinary action, including varying, suspending or cancelling an inspector’s registration. A registered building inspector may appeal a decision to take disciplinary action. Section 58G provides a power for the regulator to set its own procedure for investigations in the case of professional misconduct. Sections 58H and 58I give the Building Safety Regulator the power to impose disciplinary sanctions on registered building inspectors for professional misconduct, including fines, suspension and ultimately cancellation of registration.

### Justification for delegation

221. Under section 58E the Building Safety Regulator must publish a code of conduct for registered building inspectors. The code is likely to cover detailed rules on professional conduct for inspectors and it would not be appropriate for these to be set out in legislation. Breach of the code may be a matter which the Building Safety Regulator will wish to investigate. Section 58G provides for the Building Safety Regulator to determine the procedure for investigating misconduct. Sections 58H and 58I provide for the sanction which the Regulator may impose once misconduct is shown to have occurred.

222. The procedures will be set out in a non-legislative document by the Building Safety Regulator as part of its operationalisation process. The code and the procedural rules for investigations are likely to be detailed and long, and the Building Safety Regulator will need to make changes quickly in response to emerging issues. The Government does not consider it is appropriate to put the code and rules of this nature on the face of the Bill or in secondary legislation as the code of conduct and the investigation procedure to be primarily administrative as part of the registration regime. In relation the sanctions for misconduct, in order to ensure misconduct within the profession is dealt with, the Building Safety Regulator needs the power

to impose sanctions which are appropriate to the circumstances of the particular case in question. It would not be practicable for sanctions to be imposed on a case by case basis via legislation.

Justification for procedure selected

223. The power to set out the code of conduct and the process for investigating misconduct is exercised by the Building Safety Regulator publishing a document setting these out. The sanctions for misconduct will be imposed by the Building Safety Regulator issuing a non-legislative order in each case. We consider that as the code of conduct, and the process for investigating misconduct are technical administrative and procedural rules of a very detailed nature, and in relation to the imposition of sanctions, these will be considered and imposed on a case by case basis, we consider it is inappropriate for case specific decisions to be subject to scrutiny in Parliament.

New section 58Q of the Building Act 1984: “Professional conduct rules”

New section 58S of the Building Act 1984: “Investigations into contraventions of professional conduct rules”

New sections 58T and 58U of the Building Act 1984: “Sanctions for contravention of professional conduct rules” and “Interim suspension for suspected serious contravention”

New section 58Y of the Building Act 1984: “Operational standards rules”

New section 58Z of the Building Act 1984: “Reporting requirements”

New section 58Z2 of the Building Act 1984: “Investigations”

New sections 58Z3, 58Z4 and 58Z5 of the Building Act 1984: “Improvement notice”, “Serious contravention notices” and “Continuing failure to meet standards”

*Power conferred on: the Building Safety Regulator*

*Power exercised by: Rules of conduct, operational standards, directions and associated procedures and sanctions*

*Parliamentary procedure: None*

Purpose and context

224. Sections 58Q to 58W set out more detail on the ongoing regulation of registered building control approvers, including section 58Q which requires that the Building Safety Regulator publish a set of registration rules for registered building control approvers – these will cover the prerequisites for continuing to remain as a registered building control approver (such as financial propriety and adequate insurance). Sections 58S, 58T and 58U provide for the Building Safety Regulator to determine the procedure for investigating breaches of the professional conduct rules and allow it to impose sanctions for breaches on registered building control approvers including fines, suspension and ultimately cancellation of registration.

225. Section 58Y gives the Building Safety Regulator the power to set out rules for operational standards and procedures which local authorities and registered building control approvers must follow. Sections 58Z, 58Z2, 58Z3, 58Z4 and 58Z5 provide for the Building Safety Regulator to determine the procedure for investigating breaches of the operational standards rules and allow it to impose



sanctions for breaches on local authorities and registered building control approvers, including issuing improvement notices and serious contravention notices for breach of the rules, and for continuing failure to meet standards, cancel registration of registered building control approvers or recommend the transfer of local authority's building control functions to another authority.

226. Section 58Z provides a power for the Building Safety Regulator to direct local authorities or registered building control approvers to provide reports, and information returns.

#### Justification for delegation

227. Under section 58Q the Building Safety Regulator must publish a set of professional conduct rules for registered building control approvers to follow. And under section 58Y the Building Safety Regulator may publish operational standards rules for local authorities and registered building control approvers to follow. Breach of either set of the rules may be a matter which the Building Safety Regulator will wish to investigate.

228. Section 58S provides for the Building Safety Regulator to determine the procedure for investigating breaches of the professional conduct rules, and section 58Z2 gives a similar power in relation to breach of the operational standards rules. The procedures will be set out in a non-legislative document by the Building Safety Regulator as part of its operationalisation process rather than in legislation. The procedural rules for investigations will need to be flexible for the Building Safety Regulator to make changes quickly in response to emerging issues. The Government considers the investigation procedure to be primarily administrative as part of the registration regime. In relation the sanctions for breach of the rules (sections 58T, 58U, 58Z3, 58Z4 and 58Z5) the Regulator needs the power to impose sanctions which are appropriate to the circumstances of the particular case in question. It would not be practicable for sanctions to be imposed on a case by case basis via legislation.

229. The power for the Building Safety Regulator to direct local authorities and registered building control approvers to make information returns is crucial to the function of an effective oversight regime. Some types of report may be annual or quarterly and others may be more frequent than that.

230. It would be extremely inflexible if the types of reports and when they are required had to be set out in legislation.

#### Justification for procedure selected

231. We consider that as both the professional conduct rules and the operational standards rules are technical and operational and the process for investigating breach of them are technical and procedural, they will be of a very detailed nature which are not suitable for inclusion in primary or secondary legislation. In relation to the imposition of sanctions, these will be considered and imposed on a case by case basis, we do not consider it is appropriate for case specific decisions to be subject to scrutiny in Parliament.

232. In relation, section 58Z providing a direction making power in relation to information reporting allows the Building Safety Regulator to respond flexibly in light of the circumstances.

New section 58T, 58U, 58Z3 and 58Z4 of the Building Act 1984: “Sanctions for contravention of professional conduct rules”, “Interim suspension for suspected serious contravention”, “Improvement notice” and “Serious contravention notice” - prescribe cases where a local authority must receive details of sanctions imposed on a registered building control approver.

*Power conferred on: Secretary of State*

*Power exercised by: Regulations*

*Parliamentary procedure: Negative procedure*

#### *Purpose and context*

233. Section 58T, 58U, 58Z3 and 58Z4 provide that in prescribed cases the Building Safety Regulator may be required to send a copy of the notice imposing the sanction to all local authorities.

234. For some sanctions e.g. where a registered building control approver is suspended for, for example, not having adequate professional indemnity insurance, the local authority would have the power to cancel the initial notices submitted by the suspended registered building control approver under Part 2 of the Building Act 1984. But in order to exercise that power the local authority needs to be aware that the registered building control approver has been suspended. Under these sections the Secretary of State has the power, exercised by regulations, to prescribe the cases where the Building Safety Regulator must send a copy of the notice imposing the sanction to all local authorities.

#### *Justification for delegation*

235. The new regime for registered building control approvers will be a significant change to the operating regime under Part 2 of the Building Act 1984. In particular the new transfer procedure will be complex. We wish to consult the sector before operationalising the regime, we also need the flexibility to set out in secondary legislation the circumstances where it may be necessary for the Building Safety Regulator to notify all local authorities. We do not therefore consider it would be appropriate or practicable to set out now in primary legislation all the cases where the Building Safety Regulator must send a copy of a sanction notice imposed on a registered building control approver to all local authorities.

#### *Justification for procedure selected*

236. The power to prescribe the cases when local authorities will be provided notice of the sanctions imposed on registered building control approvers is exercised by regulations which are subject to the negative resolution procedure in both Houses of Parliament. We consider that as the cases where this requirement on the Building Safety Regulator is to be imposed is mainly administrative in nature this is the appropriate level of scrutiny in Parliament.

**Clause 46: Functions exercisable only with advice of registered building inspectors – new section 46A of the Building Act 1984: “Building control authorities’ restricted functions” and new section 54B of the Building Act 1984: “Registered building control approvers’ restricted functions”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

*Purpose and context*

237. This clause amends the Building Act 1984, by inserting two new provisions into that Act (sections 46A and 54B). This legislation provides that prescribed building control functions of the Building Safety Regulator, a registered building control approver or local authority will only be able to be carried out having first obtained and considered the advice of a registered building inspector. This is to ensure that individuals who have demonstrated the relevant competence are advising decision-makers before important building control decisions are taken. Sections 46A(2) and 54B(3) give the Secretary of State the power, by regulations, to prescribe the functions where the duty will apply.

238. The new section 46A applies to a “restricted function” exercised by a building control authority (ie a local authority or the Building Safety Regulator). Local authorities have a statutory duty to supervise and enforce building regulations in their area under section 91(2) of the Building Act 1984. Sections 91ZA and ZB (inserted by clause 36 of the Bill) explains the circumstances where the Building Safety Regulator is the building control authority, in particular where the building is a higher-risk building. New section 54B applies to a “restricted function” exercised by a registered building control approver. Registered building control approvers may supervise particular building work if they submit an initial notice under Part 2 of the Building Act 1984.

239. The Building Safety Regulator will act as the building control authority for higher-risk buildings (and potentially other buildings) under new section 91ZA of the Building Act 1984. It is not intended that all of the work these building control authorities do under this duty will be specified as restricted functions.

240. We have in mind that a local authority’s functions equivalent to those of a registered building control approver for building work, and not its functions of checking the initial notices etc. of registered building control approvers (currently known as Approved Inspectors), will be specified.

241. Some examples of local authority functions that could be specified in secondary legislation as functions which an authority can only exercise after obtaining and considering advice from a registered building inspector may include approval or rejection of full building plans and issuing completion certificates.

242. Examples of local authority functions that are unlikely to be included in the list of functions which can only be exercised after obtaining advice from a registered building inspector are accepting and rejecting initial notices from private registered

building control approvers, accepting or rejecting plans certificates from such bodies and accepting or rejecting amendment notices from such bodies.

243. Examples of Building Safety Regulator functions that could be restricted in secondary legislation may include signing off on full building plans at the proposed new Gateway two, and before the Building Safety Regulator accepts that the building has been built to the required standards at Gateway three.

Justification for delegation

244. Requiring local authorities to obtain and consider advice from a registered building inspector before making some of their building control decisions is a substantial change to the Building Act 1984 and to how the sector currently operates.

245. Before we define the specified functions for which a local authority must obtain and consider the advice of a registered building inspector before making decisions, we want to consult with the sector. We also need flexibility to amend those specified functions as there may be changes in the sector or emerging issues that we cannot currently predict. Consequently, we do not consider it would be appropriate to specify the functions in primary legislation.

246. In relation to the Building Safety Regulator, the Government intends to require specific building control procedures to be followed under the building regulations in respect of building control for higher-risk buildings.

247. The Government further intends that the Building Safety Regulator, when acting as the building control authority, will take professional building control advice before making crucial regulatory decisions on higher-risk buildings.

248. But it is not possible to identify the precise functions as many of them will be in secondary legislation yet to be made. Following the making of those building regulations in respect of higher-risk buildings, this delegated power enables the Government to prescribe that the crucial building control decisions on higher-risk buildings must be taken only after the Building Safety Regulator has obtained and considered registered building inspector advice. Consequently, we do not consider it would be appropriate to specify the functions in primary legislation.

249. Requiring registered building control approvers to obtain and consider advice from a registered building inspector before making each of their building control decisions is a substantial change to the Building Act 1984 and to how Approved Inspectors currently operate within the sector.

250. Before we define what the specified functions for which a registered building control approver must obtain and consider the advice of a registered building inspector before making decisions will be, we want to consult with the sector. We also need the flexibility to amend what those specified functions are, where there may be changes in the sector or emerging issues. Consequently, we do not consider it would be appropriate to specify the functions in primary legislation.

### Justification for procedure selected

251. The power to prescribe the functions to which the duty to obtain and consider advice from a registered building inspector is exercised by regulations which are subject to the negative resolution procedure in both Houses of Parliament. The new requirement will be part of the procedural rules in the existing building control process and we consider requiring a building control authority or a registered building control approver to obtain professional advice before making building control decisions is part of that process and as a procedural matter we consider the negative resolution procedure is the appropriate level of scrutiny.

### **Clause 48: Higher-risk building work: registered building control approvers – new section 52A of the Building Act 1984: “Cancellation of initial notice when work becomes higher-risk building work”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

252. Clause 48 amends the Building Act 1984, removing the ability for persons carrying out any building work on higher-risk buildings, and any work for the construction of higher-risk buildings or works which result in an existing building becoming a higher-risk building, to be able to choose their own building control.

253. Specifically, the clause inserts a new section 52A into the Building Act 1984, concerning the “cancellation of initial notice when work becomes higher-risk building work”. When an initial notice is still in force, but it appears to either the registered building control approver, the person carrying out the work or the local authority that the work has become higher-risk building work. All parties must cancel the initial notice. The provision also includes a number of powers under which the Secretary of State can, by regulations, set out the format and content of the notice which cancels an initial notice.

### Justification for delegation

254. Part 2 of the Building Act 1984 makes a number of provisions for forms to be in a prescribed form. The form to cancel an initial notice will contain detailed information. We do not consider it would be appropriate for this level of detail to be included in primary legislation.

### Justification for procedure selected

255. The power to prescribe the form is exercised by regulations which are subject to the negative resolution procedure in both Houses of Parliament. The new requirement is part of the existing building control process in Part 2 of the Building Act 1984 and we consider it is technical and procedural matter for which we consider the negative resolution procedure is the appropriate level of scrutiny.

**Clause 49: Higher-risk building work: public bodies – new section 54A of the Building Act 1984: “Public bodies and higher-risk building work”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Affirmative procedure*

*Purpose and context*

256. This clause amends the Building Act 1984. It gives the Secretary of State the power through regulations to amend sections 5 and 54 of, and Schedule 4 to the Building Act 1984, including to prevent a public body<sup>3</sup> from submitting a public body notice (a notice given to the local authority to supervise their own building work instead of the local authority) for higher-risk building work.

257. Historically, provisions covering public body notices allowed public bodies to carry out supervision of their own building control work. However, the power in section 54 has not been utilised, and currently the Secretary of State has not approved an organisation under this power.

258. There could be a conflict of interest if a public body was to supervise their own higher-risk building work, and/or have the ability not to notify the Building Safety Regulator of compliance.

*Justification for delegation*

259. In response to the Independent Review’s recommendations, we are removing the ability for persons carrying out the work to choose the building control body to provide regulatory oversight for higher-risk building work. Therefore, we are preventing public bodies from being able to supervise their own building work for higher-risk buildings.

260. Currently more work needs to be done to understand the usage of existing powers exempting public bodies from having to follow regulatory procedures and it is not therefore possible to include detailed provisions in the primary legislation.

261. This power is subject to the affirmative procedure, and therefore will be subject to agreement from both Houses of Parliament.

*Justification for procedure selected*

262. Regulations made under this power will be subject to affirmative resolution in both Houses of Parliament. This is a Henry VIII power which could be used to make significant changes to sections 5 and 54 of, and Schedule 4 to the Building Act 1984 in providing how they will apply in relation to higher-risk buildings. We consider that

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<sup>3</sup> A public body for this purpose is a body (corporate or unincorporated) that acts under an enactment for public purposes and for its own profit and is of a description that is approved by the Secretary of State in accordance with building regulations.

Parliament should have the opportunity for a high degree of scrutiny in respect of proposals of this nature.

**Clause 50(1): Information gathering – new subsections (4C) and (4D) of section 53 of the Building Act 1984**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

*Purpose and context*

263. This clause amends the Building Act 1984 by amending sections 53 and 57. It ensures that if a registered building control approver ceases to be involved in a project, its records of supervision of a building work are made available.

264. Subsection (1) inserts text into the Act in section 53. When a person is required to give such information under subsection (4A) or (4C), this information must be given within a certain time period, which is to be defined in secondary legislation as per subsection (4C). Subsection (4D) requires the registered building control approver to provide information to the local authority and the person who is carrying out or intending to carry out the work within a prescribed period.

265. The information that is provided under subsection (4A) is also to be defined in secondary legislation.

*Justification for delegation*

266. We are prescribing the time period in regulations so we can consult with industry about the appropriate timescales to hand over project information. Due to the complexities of works undertaken by registered building control approvers, it would be more appropriate to seek views across the whole market on what is a reasonable time period to hand over information. Similarly, for subsection (4D) we also wish to consult the sector as to the type of information that should be prescribed information that must be shared by the registered building control approver with the person carrying out the work.

*Justification for procedure selected*

267. The power to prescribe the time limit and the information to be provided is exercised by regulations which are subject to the negative resolution procedure in both Houses of Parliament. The new requirements are part of the existing building control process in Part 2 of the Building Act 1984 and we consider it is technical and procedural matter for which we consider the negative resolution procedure is the appropriate level of scrutiny.

**Clause 51: Insurance – amendments to section 47(6), (6B) and (6C) of the Building Act 1984**

*Power conferred on: Secretary of State*

*Power exercised by: Designation and guidance*

*Parliamentary procedure: None*

*Purpose and context*

268. This clause amends section 47 of the Building Act 1984 and allows for the Secretary of State to designate bodies to approve insurance schemes and the publication of guidance as to the adequacy of insurance schemes, subject to consultation with the Secretary of State.

269. Current legislation allows for the Secretary of State to approve insurance schemes that appear to secure the provision of adequate insurance for work undertaken by registered building control approvers.

*Justification for delegation*

270. The clause allows the Secretary of State to designate bodies to undertake the approval of insurance schemes and to issue relevant guidance subject to approval.

271. We require the right expertise to advise the Secretary of State on insurance matters, and therefore we will be able to conduct an open and fair selection process before designating this body. It would not be appropriate to include the name of the (likely private sector) body in primary legislation as it may change as the designation may be reappointed from time to time.

*Justification for procedure selected*

272. We consider that the designation of a body, the publication of insurance guidance as to adequacy are technical, operational and procedural matters which will be of a very detailed nature which are not suitable for inclusion in primary or secondary legislation.

**Clause 52: Information – new section 56A of the Building Act 1984: “Giving information by electronic means”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

*Purpose and context*

273. The Building Act 1984 requires persons carrying out the work, registered building control approvers or the local authority to use prescribed forms when undertaking activities specified in Part 2 of the Building Act 1984.



274. Section 56 of the Building Act 1984 requires local authorities to capture notices, certificates and other documentation regarding these activities. These systems are localised and are held for each local authority, which can mean they are not easily accessible. Many registers are kept in paper form making it difficult to utilise the information.

275. This clause amends the Building Act 1984 and creates a new requirement for the Building Safety Regulator to hold this information and places obligations for specified persons to be required to use the facility to submit information. This power also enables the Secretary of State, by regulations, to require or authorise specified persons to submit information through other means such as physical documents.

276. This modernises the way information on registered building control approvers' activities is held, assists the Building Safety Regulator in carrying out their oversight function of building control and reduces the risk to building safety by having a record of information including decisions and completions for works.

277. By having a central repository in electronic form this ensures that vital and key safety information is maintained and accessible.

#### Justification for delegation

278. We have the power by regulations to define the cases where a specified person may be required or authorised otherwise than through the facility to enable us to consult on the appropriate use of these powers. The electronic facility will need to be created, therefore it is not possible to foresee what information will in practice be able to be submitted via it and it is not therefore possible to set these out in the Bill. Currently many documents, including building plans, tend to be submitted in paper form.

279. The facility will be digital by default, but we would also need a power to make regulations to provide for circumstances where persons may not be able to use digital means.

280. We are also using regulations to specify relevant information for specified people as further work is required detailing the required use of prescribed forms and documents.

#### Justification for procedure selected

281. The power to make regulations under this provision is subject to the negative resolution procedure in both Houses of Parliament. The power requires persons to use the electronic facility rather than submitting notices etc in paper form to their local authority. The power is part of the technical and procedural rules relating to the building control process under Part 2 of the Building Act 1984. We consider the negative procedure is appropriate level of scrutiny for provisions of this nature.

**Clause 52: Information – new section 56B of the Building Act 1984:  
“Requirement to keep register”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

*Purpose and context*

282. The Building Act 1984 requires the persons carrying out the work, the registered building control approver or the local authority to use prescribed forms when undertaking activities specified in Part 2 of the Building Act 1984.

283. Section 56 of the Building Act 1984 requires local authorities to capture notices, certificates and other documentation regarding these activities. These systems are localised and are held for each local authority which are not easily accessible. Many registers are kept in paper form making it difficult to utilise the information.

284. This clause amends the Building Act 1984 and creates a new requirement for the Building Safety Regulator to hold this information on a national register.

285. This modernises the way information on registered building control approvers' activities is held, enabling the Building Safety Regulator to carry out its oversight function of building control and reduces the risk to building safety by having a record of information including decisions and completions for works.

286. The power allows the Secretary of State to specify what information the Building Safety Regulator must keep on the register and what specified information is available to the public (the electronic facility provided for by new section 56A will likely include documentation that might not be included on the public 'register' part of the facility).

*Justification for delegation*

287. It would not be appropriate to include in the primary legislation details of the information to be held on the register, as the specified relevant information is due to be prescribed in regulations. Some of the specified relevant information may not be appropriate in the public domain. This will be specified under regulations.

*Justification for procedure selected*

288. The power to make regulations under this provision is subject to the negative resolution procedure in both Houses of Parliament. The power will set out the types of documents to be included and the administrative details for the public register – opening times, etc. The power is mainly administrative and procedural. We consider the negative procedure is appropriate level of scrutiny for provisions of this nature.

**Clause 52: Information – new section 56C of the Building Act 1984: “Delegation of functions”**

*Power conferred on: Building Safety Regulator*

*Power exercised by: Delegation*

*Parliamentary procedure: None*

*Purpose and context*

289. This clause amends the Building Act 1984, by inserting a new section 56C which allows the Building Safety Regulator to delegate its functions of setting up an electronic portal and setting up a national register (under sections 56A and 56B) to another body.

290. The power to delegate allows the Building Safety Regulator to contract with another body (such as one that has experience of running an electronic portal or a national register) to deliver these functions.

*Justification for delegation*

291. The ability to delegate to another body (whilst retaining the legal responsibility for the functions) gives the Building Safety Regulator flexibility to buy in experience and expertise for third parties. It would not be appropriate for the name of the body to be set out in legislation as this may change from time to time.

*Justification for procedure selected*

292. The power to delegate is for administrative convenience. The Building Safety Regulator will remain legally responsible for the exercise of these functions. Consequently, we do not consider it is necessary for Parliament to scrutinise the day to day administration of how the Building Safety Regulator administers its operations.

**Clause 52: Information – new subsections (4) to (6) of section 55 of the Building Act 1984: “(Appeals)”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

*Purpose and Context*

293. This clause amends section 55 of the Building Act 1984, it creates an obligation for the local authority on an appeal under subsection (1) or (3), to send specified information to the Building Safety Regulator for inclusion on the national register.

294. This information is needed to keep the national register up to date. Registered building control approvers can appeal certain decisions under Part 2 of the Building Act 1984 and the validity of their notices will depend on the outcome of these decisions. In order to ensure the validity of particular notices on the national register

as up to date, the Building Safety Regulator needs to be informed as to the outcome of cases as soon as possible.

Justification for delegation

295. We are using regulations to specify relevant information as further work is required detailing the information required that would be of use to the Building Safety Regulator. We do not consider it would be appropriate in primary legislation to include detailed provisions as to the types of information about appeal decisions which must be sent to the Building Safety Regulator. We consider it is appropriate for these detailed technical and procedural provisions to be included in regulations.

Justification for procedure selected

296. The power to make regulations under this provision is subject to the negative resolution procedure in both Houses of Parliament. The power will set out the administrative details for a local authority sharing information about appeal decisions with the Building Safety Regulator for inclusions in the national register. The power is administrative and procedural. We consider the negative procedure is the appropriate level of scrutiny for provisions of this nature.

**Clause 53: New initial notices – new section 53B of the Building Act 1984: “New initial notice: content of transfer certificates, new initial notice: prescribed time periods specified under sections 53(8)(a), 53B(5) and 53C(4), (5) and (6)(a), new section 53C (3) of the Building Act 1984: Consideration of transfer certificate and report and new section 53D of the Building Act 1984: Cancellation of initial notice: change of registered building control approver**

New section 53B(3) and (5) of the Building Act 1984: “New initial notice: change of registered building control approver”

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

Purpose and context

297. Under the current regime if an Approved Inspector (under the new regime referred to as a registered building control approver) is unable to undertake their role, their work reverts to the local authority automatically. In some circumstances (such as a firm becoming insolvent) these automatic unplanned transfers to the local authority can cause disruptions to clients and local authorities. Similar circumstances could arise in the new regime.

298. Consequently, clause 53 amends the Building Act 1984, by amending section 53 and inserting new clauses after section 53. These provisions create a new process that allow the person(s) carrying out any work to appoint a new registered building control approver to take over the building works.

299. The new section 53B gives the Secretary of State the power, through regulations, to prescribe the information which the transfer certificate must contain.

*Justification for delegation*

300. The transfer process is entirely new. The Secretary of State needs the flexibility to prescribe the information to be provided in the transfer certificate. The form and content of existing certificates and notices which are provided under this Part of the Building Act 1984 are currently prescribed under regulations. We do not consider it would be appropriate to put the detailed content of a certificate in primary legislation. The power to change the time periods in the transfer process is included to give flexibility when operationalising the process following consultation with the sector.

*Justification for procedure selected*

301. The power to make regulations under this provision is subject to the negative resolution procedure in both Houses of Parliament. The power will set out the administrative and procedural details for the transfer from one register building controller to another e.g. in the event of the original registered building control approver becoming insolvent.

302. The power to specify the time periods which apply to the transfer certificate and accompanying documents and the information to be included in a transfer certificate is administrative and procedural. We consider the negative procedure is appropriate level of scrutiny for provisions of this nature.

New initial notice: prescribed time periods specified under sections 53(8), 53B(5) and 53C(4), (5) and (6) of the Building Act 1984

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

*Purpose and context*

303. Under the current regime if an Approved Inspector (under the new regime these will be referred to as a registered building control approver) is unable to undertake their role, their work reverts to the local authority automatically. In some circumstances (such as a firm becoming insolvent) these automatic unplanned transfers to the local authority can cause disruptions to clients and local authorities. Similar circumstances could arise in the new regime.

304. Consequently, clause 53 amends section 53 of the Building Act 1984 and inserts new clauses after section 53. These provisions create a new process that allow the person(s) carrying out any work to appoint a new registered building control approver to take over the building works.

305. The new section 53(8) requires the registered building control approver and the person carrying out the work to submit a new initial notice to the local authority

within the period of seven days beginning with the day on which the original initial notice was cancelled, or such other period as may be prescribed. The new section 53B requires the registered building control approver and the person carrying out the work to submit a transfer certificate and accompanying documents within specified periods to the local authority (e.g. 21 days to accept or reject a transfer certificate) and section 53B(5) gives the Secretary of State a power, by regulations to change these specified periods.

306. The new sections 53C(4), (5) and (6) specify that during the period of 21 days beginning with the day on which the transfer certificate and transfer report is given to the local authority or such other period as may be prescribed, the local authority may, by notice, require the registered building control approver provide information as specified in the notice.

307. These provisions will give the Secretary of State the power, through regulations to prescribe a different period in building regulations other than the periods specified in section 53(8), 53B(5) and 53C(4), (5) and (6).

#### Justification for delegation

308. The transfer process is entirely new. The prescribed periods are set out to give a reasonable time for the registered building control approver and the person carrying out the work to submit a new initial notice. These periods are there to set legislative controls to reduce the risk to building safety where there has been a change or loss in building control. The Secretary of State needs the flexibility to prescribe other periods as there may be a need to prescribe periods for particular types of buildings due to complexities of the construction of the building.

#### Justification for procedure selected

309. The power to make regulations under these provisions is subject to the negative resolution procedure in both Houses of Parliament. The powers will set out the administrative and procedural details, namely the time period, for the transfer from one register building controller to another e.g. in the event of the original registered building control approver becoming insolvent.

310. The powers to specify the time periods which apply to submitting a new initial notice, the transfer certificate and accompanying documents and the information to be included in a transfer certificate are administrative and procedural. We consider the negative procedure is appropriate level of scrutiny for provisions of this nature.

New initial notices – new section 53C(3), (4), (5) and (6) of the Building Act 1984: “Consideration of transfer certificate and report” – prescribed grounds

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

311. Under the current regime if an Approved Inspector (under the new regime referred to as a registered building control approver) is unable to undertake their role, their work reverts to the local authority automatically. In some circumstances (such as firm becoming insolvent) these automatic unplanned transfers to the local authority can cause disruptions to clients and local authorities. Similar circumstances could arise in the new regime.

312. Consequently, clause 53 amends the Building Act 1984, by amending section 53 and inserting new clauses after section 53. These provisions create a new process that allow the person(s) carrying out any work to appoint a new registered building control approver to take over building control.

313. The new section 53C gives the Secretary of State the power, through regulations, to prescribe grounds on which a local authority may reject a transfer certificate which is submitted by a registered building control approver (and its client).

### Justification for delegation

314. The transfer process is entirely new. The Secretary of State needs the flexibility to prescribe the grounds for rejection of a new initial notice under new section 56B. All existing grounds for rejection for certificates and notices in this Part of the Building Act 1984 are prescribed under regulations and not set out in the primary legislation.

### Justification for procedure selected

315. The power to make regulations under this provision is subject to the negative resolution procedure in both Houses of Parliament. The power will set out the details of the circumstances in which a local authority can reject a transfer certificate submitted by a registered building control approver. The power to specify these circumstances is administrative and procedural, examples of current grounds include: is the person an Approved Inspector, and does the person have a certificate showing they have insurance. We consider the negative procedure is appropriate level of scrutiny for provisions of this nature.

New initial notice – new section 53D(2) and (3) of the Building Act 1984: “Cancellation of initial notice: change of registered building control approver”

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

316. Under the current regime if an Approved Inspector (under the new regime referred to as a registered building control approver) is unable to undertake their role. The registered building control approver and the person carrying out the work, or intending to carry out the work, shall cancel the initial notice.

317. The local authority does not have the power to cancel the initial notice except for under limited grounds.

318. This new section 53D provides that where the transfer process applies ie an initial notices is cancelled, for example, because a registered building control approver has their registration suspended and a new initial notice is submitted for the work, the local authority with the power to cancel the new initial notice when the transfer certificate and report is rejected.

319. The new section 53D gives the Secretary of State the power, through regulations, to prescribe the form of the notice given to the registered building control approver for this cancellation and the person shown in the initial notice as the person intending to carry out the work when the local authority cancels the initial notice.

320. This section allows the Secretary of State to prescribe the form when the person carrying out the work cancels the initial notice.

#### Justification for delegation

321. The Secretary of State needs the flexibility to prescribe the information to be provided in the cancellation notice. All existing certificates and notices under this Part of the Building Act 1984 are prescribed under regulations. It is not appropriate to included detailed provisions setting out the content of these procedural notices in primary legislation.

#### Justification for procedure selected

322. The power to make regulations under this provision is subject to the negative resolution procedure in both Houses of Parliament. The power will set out the format and content of a cancellation form. The power is administrative and procedural. We consider the negative procedure is appropriate level of scrutiny for provisions of this nature.

### **Clause 54: Cancellation of initial notice – amendment to section 52(1), (3), (5A), (5B) and (7) of the Building Act 1984**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

#### Purpose and context

323. This clause amends section 52 of the Building Act 1984, to create new powers and obligations for local authorities, registered building control approvers and persons carry out work to cancel the initial notices. An initial notice is a notice which a registered building control approver (and the client) submit to the local authority specifying the work and, if accepted, the initial notice has the effect of designating the supervision of building control to the registered building control approver.



324. Section 52 already provides some grounds under which persons can, and in some cases must, cancel the initial notice e.g. the registered building control approver is unable to carry out the supervision work.

325. This clause includes a power for the Secretary of State to prescribe through regulations, following the negative procedure, additional circumstances where an initial notice must be cancelled by a registered building control approver (new section 52(1)(f), a local authority (new section 52(5B)(e)) or the person carrying out or intending to carry out the work (new section 52(3)(b)).

326. Subsection (6) of clause 54 inserts new subsection (7) into section 52. This creates new obligations for local authorities, where they propose to cancel an initial notice under grounds of subsection (5A), to give seven days' notice to the registered building control approver. A power is given to the Secretary of State to prescribe the form of this notice in regulations.

#### Justification for delegation

327. The power to prescribe new circumstances where an initial notice must be cancelled has been introduced to provide flexibility in the legislation for unforeseen circumstances that may become apparent in the future and enable the reversion of works to another registered building control approver or local authority. The power to prescribe the form of the notice to be given by local authorities is a detailed administrative and procedural provision that is not appropriate to include in primary legislation.

328. The Secretary of State needs the flexibility to prescribe the information to be provided in the cancellation notice. All other certificates and notices are prescribed under regulations.

#### Justification for procedure selected

329. The power to prescribe additional circumstances are subject to the negative resolution procedure in both Houses of Parliament. This is part of the procedural and administrative rules relation to the processes under Part 2 of the Building Act 1984. Consequently, we consider it is appropriate for this matter to be subject to scrutiny under the negative procedure.

### **Clause 55: Functions under Part 3 of Building Act 1984 – new section 90A(1), (2), (3) of the Building Act 1984**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Affirmative procedure*

#### Purpose and context

330. Part 3 of the Building Act 1984 places a number of functions on local authorities in relation to buildings, including powers to issue notices requiring building owners

to take action in respect of various health and safety matters; defective, dilapidated and dangerous buildings; and demolitions of buildings.

331. Clause 55 inserts new section 90A into the Building Act 1984. Section 90A(1)(a) provides powers for the Secretary of State, by regulations, to allocate responsibilities in respect of these functions between building control authorities ie the Building Safety Regulator and local authorities. We may for example use this power to allocate some Part 3 functions to the regulator in respect of higher-risk buildings.

332. Subsection (1)(b) allows for notification requirements to be imposed on the regulator and/or local authorities. We expect that we will use this power to require that, where the local authority retains the function in respect of higher-risk buildings, it must notify the regulator before taking action, and vice versa.

333. Subsection (2) gives the Secretary of the State the power to make such consequential amendments of the Building Act 1984 as the Secretary of State considers appropriate, through secondary legislation; and subsection (3) allows for transitional, saving and incidental provision.

#### Justification for delegation

334. Part 3 will apply to higher-risk (as other) buildings. The Government is concerned to avoid duplicated regulation where the local authority can take action under Part 3 on safety issues which will also be subject to the safety case regime. However, some of the functions in Part 3 relate closely to other local authority responsibilities e.g. under environmental health and the Housing Act 2004.

335. Therefore, careful consideration needs to be given, including consultation with local authorities as to whether and, if so, how, Part 3 functions should be allocated. Providing a power to make any changes in secondary legislation will allow for this.

336. Also, it is possible that changes may need to be made over time to refine how these functions are allocated, in the light of experience with operating the new safety regime for higher-risk buildings, and secondary legislation provides the flexibility to do this in a timely manner.

#### Justification for procedure selected

337. As the effect of the exercise of these powers may involve removing functions from local authorities or allocating functions jointly to the Building Safety Regulator and local authorities, the Government considers it appropriate that they should be subject to the affirmative procedure in both Houses of Parliament.

## **Clause 56: Minor and consequential amendments - Schedule 5: Minor and consequential amendments in connection with Part 3**

Paragraph 5(2): amendments to section 6 of the Building Act 1984

*Power conferred on: Secretary of State or designated body*

*Power exercised by: Notice*

*Parliamentary procedure: None*

### *Purpose and context*

338. Paragraph 5(2) inserts a new subsection (5A) in section 6 of the Building Act 1984 which clarifies that the notice of approval for statutory guidance under section 6(1) of the Building Act 1984 (Approved Documents) may contain transitional or saving provision, and different provision for different purposes or areas. This is already the Government's practice and the new subsection is therefore clarificatory and mentioned in this memorandum only for information.

Paragraph 5(3): amendments to section 6 of the Building Act 1984

*Power conferred on: Secretary of State*

*Power exercised by: Order (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### *Purpose and context*

339. This paragraph amends the existing powers in section 6 of the Building Act 1984, dealing with the approval or withdrawal of approval of documents for the purposes of building regulations. Under section 6 the Secretary of State may designate a body for the purposes of approving documents giving guidance about building regulations, by way of making an order.

340. This provision inserts new subsection (9) into section 6 of the Building Act 1984. This new subsection clarifies the power to designate by making clear that an order may designate a body only in relation to certain types or buildings, or only in relation to certain types of work, or only in relation to certain provisions of building regulations.

### *Justification for delegation*

341. This provision clarifies the existing order-making power to make clear that bodies can be designated to produce only some types of guidance, not necessarily all guidance.

### *Justification for procedure selected*

342. The existing order-making power, which we are clarifying, is subject to the negative procedure.

Paragraph 7: amendments to section 8 of the Building Act 1984

*Power conferred on: the Building Safety Regulator*

*Power exercised by: Direction*

*Parliamentary procedure: None, but section 10 of the Building Act 1984 imposes other procedural safeguards*

*Purpose and context*

343. Section 8(2) of the Building Act 1984 provides for building regulations to enable local authorities to exercise the power provided to the Secretary of State in section 8(1), on application, to dispense with or relax a requirement of building regulations if they consider its operation to be unreasonable. Section 8(4) enables for building regulations to provide that a requirement in the regulations can be dispensed with or relaxed by a public body if that body considers the operation of the requirement to be unreasonable. The power in section 8(2) has been used to make regulation 11 of the Building Regulations 2010 (as amended).

344. Paragraph 7 of Schedule 5 inserts a new section 8(3A) into the Building Act 1984 to provide that for building work for which the Building Safety Regulator is the building control authority, it can, on application, dispense with or relax a requirement if it considers the operation of that requirement to be unreasonable. New section 8(3A) therefore provides the Building Safety Regulator with the same power to dispense with or relax a requirement as is available to a local authority.

*Justification for delegation*

345. Applications for dispensations and relaxations need to be considered on a case by case basis and decisions will be dependent on the circumstances of the building, the building work being undertaken, the particular building regulations requirement and the risks involved. Judgements in particular cases are best made by the body responsible for checking compliance and enforcing the building regulations. As noted, this power is already exercisable by local authorities and therefore new section 8(3A) is consistent with existing law.

*Justification for procedure selected*

346. As applications for dispensations and relaxations will be dealt with on a case-by-case basis, it would not be possible to prescribe in legislation how they should be decided. The decisions are likely to be highly technical and specific to the particular circumstances. This power is already exercisable by local authorities without Parliamentary oversight and therefore new section 8(3A) is consistent with existing law. For these reasons, we consider that it is appropriate to have no Parliamentary procedure for the use of this power.

Paragraph 25: New section 35(2) and (3) of the Building Act 1984: “Offence of contravening building regulations etc”

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

347. New section 35(2) replicates the existing provision of section 35 that enables the Secretary of State to make provision that breach of certain building regulations is not a criminal offence.

348. New section 35(3) enables the Secretary of State to make provision for defences in relation to specific building regulations. This is intended for use in connection with the new Mandatory Occurrence Reporting System which dutyholders will be required to establish as part of the new building safety regime.

349. The power created by this new section is intended to be used to create two defences in relation to these duties in secondary legislation:

- a. A defence to the offence of failure to report where the person being prosecuted was not aware of the occurrence which gave rise to the requirement to report, so long as that person had taken all reasonable steps to be made aware, in sufficient time, of the occurrence. This will place the onus on the Principal Contractor and Principal Designer to take steps to become aware of occurrences happening on site; and
- b. The obligation to report lies on both the Principal Contractor and Principal Designer. In order to avoid duplicate reports of occurrences, it should be a defence to the offence of failure to report within the prescribed period where the person being prosecuted reasonably believed that the other dutyholder (i.e. where the Principal Contractor is being prosecuted, then the Principal Designer, and vice versa) had already reported the occurrence.

350. The power is also intended to be used to set out new defences in future, if appropriate, in the light of experience of the operation of the Mandatory Occurrence Reporting System or other aspects of building regulations.

### Justification for delegation

351. The power in new section 35(2) to prescribe certain provisions of building regulations so that contravention of those provisions is not an offence exists in the current section 35 which is being replaced by this new section 35 and has been used to make regulation 47 of the Building Regulations 2010 (as amended), so this power merely replicates the existing position.

352. The power in new section 35(3) to prescribe specific defences to breaches of building regulations is intended to enable defences to be set and amended in the light of experience of the drafting and subsequent operation of the new Mandatory Occurrence Reporting System. A power to set out or amend defences

in secondary legislation will enable those defences to keep pace with developments in the way schemes operate and make sure that dutyholders are not unduly penalised.

Justification for procedure selected

353. Regulations made under this clause will be subject to the negative procedure. Building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and the Government believes that it is appropriate to maintain this procedure for regulations made under new section 35, in order to maintain consistency.

354. We anticipate that regulations made under this procedure will be uncontroversial and will not require a high degree of Parliamentary scrutiny, although of course this scrutiny is possible if Parliament wishes to debate the regulations.

Paragraphs 34 and 36: new sections 47(3A) and 51A(5A) of the Building Act 1984 - prescribed circumstances

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

Purpose and context

355. Under section 47 of the Building Act 1984 the procedure for submitting an initial notice (and under section 51A an amendment notice) provides that if the local authority who receives it does not decide to accept or reject it within a specified period (currently 5 days) the notice is deemed to be accepted. The amendment gives the Secretary of State the power, by regulations, to disapply this acceptance in prescribed cases.

Justification for delegation

356. There are a number of amendments to the procedures for submitting notices under Part 2 of the Building Act 1984 including switching off the ability of developers of higher-risk buildings from using Approved Inspectors, suspending registered building control approvers and allowing developers to transfer to a new registered building control approver where the original registered building control approver is no longer able to carry out the supervision.

357. The new regime will be more complicated than the current Part 2. For example, the transfer process could take a number of weeks to complete. There are likely to be some circumstances, such as where there is a transfer to another registered building control approver, where the procedural rule deeming acceptance will not be appropriate under the new regime. The power allows the Secretary of State to consider those circumstances, consult on them with the sector (as required by section 13A of the Building Act 1984) and make regulations where necessary.

Justification for procedure selected

358. The power is for the Secretary of State to make provisions as to the procedures for initial notices and amendment notices and as such it is considered appropriate for the procedure to negative resolution procedure in both Houses of Parliament, this aligns with existing procedural rules for notices under Part 2 of the Building Act 1984 which are also subject to the negative resolution procedure.

Paragraph 40: amendment to section 57 of the Building Act 1984

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

Purpose and context

359. This is a minor amendment consequential on the repeal of section 16 and paragraph 4A of Schedule 1 of the Building Act 1984.

360. Section 57 creates an offence of deliberately or recklessly giving notices and certificates which contain false or misleading information. The current provision covers certificates given under section 16(9) and paragraph 4A of Schedule 1. The current provision covers certificates given under section 16(9) and paragraph 4A of Schedule 1. We are repealing both of these provisions and replacing them with clearer and simpler certificate-giving powers under new paragraphs 1A and 1C of Schedule 1.

Justification for delegation

361. This delegated power allows us to designate the appropriate provisions of building regulations in respect of which this offence will apply, so that we can specify the particular certificates and notices described in the regulations in respect of which it is an offence if they contain false or misleading information. This should lead to greater clarity as the regulations themselves will make clear that the offence applies, as compared to the current position in which someone reading the regulations may not be aware of the provisions of section 57.

Justification for procedure selected

362. This is a simple designation power, to identify the notices and certificates subject to the offence in section 57. We do not expect that it will be controversial, and we consider that the negative procedure provides the appropriate degree of Parliamentary scrutiny.

Paragraph 42: amendments to section 91A of the Building Act 1984

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

363. Section 91A of the Building Act 1984 contains a power which may be used to require local authorities to set up registers to hold prescribed information and documents. The information and documents to be held on registers; the manner in which, and the time periods for which, information should be held on the registers are to be prescribed in building regulations.

364. The amendment merely extends the existing delegated power in section 91A so that it can be used in respect of the Building Safety Regulator as well as local authorities, so that the Building Safety Regulator can be required to keep registers where appropriate. The information to be held on registers by the Building Safety Regulator, and the arrangements for doing so, will be prescribed in building regulations.

### Justification for delegation

365. The types of information to be held and the arrangements for holding registers will need to be set out in detail which is most appropriate to be done in secondary legislation. This amendment merely extends the existing delegated power in section 91A so that it can be used in respect of the Building Safety Regulator as well as local authorities, so that the Building Safety Regulator can be required to keep registers where appropriate.

### Justification for procedure selected

366. Regulations made under this power will contain detailed administrative provisions relating to the keeping of registers, and as such the Government considers that the negative procedure provides the appropriate level of Parliamentary scrutiny. Building regulations are already subject to the negative procedure (section 1(4) of the Building Act 1984) so adopting that procedure will be consistent with that existing practice.

Paragraph 62: amendments to Schedule 1 to the Building Act 1984

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

367. Schedule 1 to the Building Act 1984 provides powers for building regulations to be made to cover matters set out in the Schedule. Paragraph 62 contains minor amendments to the Schedule consequential to powers being provided elsewhere in the Bill for building regulations to be made, which will replace or amend powers provided by the provisions in Schedule 1.



### Justification for delegation

368. The matters covered in Schedule 1 require detailed technical or procedural provision to be made, which is best done through secondary legislation, as in current building regulations.

### Justification for procedure selected

369. This paragraph contains minor amendments to existing powers in Schedule 1 to the Building Act 1984, which are already subject to the negative procedure.

## **Clause 57: Appeals - Schedule 6: Appeals and other determinations**

Paragraph 7: New section 43A(2) of the Building Act 1984

*Power conferred on: the Building Safety Regulator and the First-tier Tribunal*

*Power exercised by: Direction*

*Parliamentary procedure: None*

### Purpose and context

370. This power enables the Building Safety Regulator and the First-tier Tribunal, when determining appeals to give directions to give effect to their determination.

371. This new section applies to an appeal under section 20(5) (materials unsuitable for permanent building), section 39 (relaxations) or section 50(2) (plans certificate) of the Building Act 1984. For example, the First-tier Tribunal might direct a building control authority to grant a relaxation or prevent it from using an unsuitable material during the construction of a dwelling.

372. This power is not legislative in character and is therefore mentioned only for information.

Paragraph 31: new section 101A of the Building Act 1984: "Appeal: refusal to consider application etc on ground is higher-risk building work"

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

373. This clause inserts section 101A into the Building Act 1984. The new section includes a power for Secretary of State, by regulations, to set out details of time periods which will apply to appeals, the appeal fees, the form to be used to give notice of an appeal and the information that may need to accompany that notice.

### Justification for delegation

374. The detailed provisions as to the fee to be charged, the format and content of an appeal notice and the period within which it is to be submitted are not appropriate to be included in the primary legislation. Consequently, we consider it is appropriate for the Secretary of State to take a power to set out these detailed provisions in regulations.

### Justification for procedure selected

375. The power to make these provisions in regulations is subject to the negative procedure in both Houses of Parliament. These types of provisions are procedural in nature and we consider the negative procedure is the appropriate level of scrutiny for provisions of this nature.

### **Clause 58: Fees and charges – new section 105A of the Building Act 1984: “Fees and charges”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

376. Paragraphs 5 and 9 of Schedule 1 to the Building Act 1984 provide powers for building regulations to be made to enable local authorities to levy charges in connection with the exercise of their functions under building regulations and for charges to be fixed in schemes and determined in accordance with principles set out in building regulations. These powers have been used to make the Building (Local Authority Charges) Regulations 2010 (as amended).

377. New section 105A extends these powers so that regulations can be made to enable fees and charges to be levied by both the Building Safety Regulator and local authorities in connection with the exercise of their functions under the Building Act 1984 and regulations made under it. The power allows for regulations to prescribe the levels of fees and charges and to make provisions for schemes under which charges are fixed; the principles to be followed in setting up schemes; and to enable different levels of fees and charges to be levied for different purposes.

378. Paragraphs 5 and 9 of Schedule 1 will be repealed as a consequence of new section 105A (see paragraph 62 of Schedule 5 to this Bill).

### Justification for delegation

379. Levels of fees and charges are administrative and require the flexibility to change (e.g. changes to inflation rates) without needing to amend primary legislation. The current Building (Local Authority Charges) Regulations 2010, prescribe the functions for which charges can be levied by local authorities (‘chargeable activities’). Regulations made under this power will replace those regulations. Chargeable activities may change over time and secondary legislation provides

flexibility to amend the list of chargeable activities over time, to reflect new circumstances. Enabling the principles to govern schemes to be set out in regulations also makes it easier to adapt these in line with any changes in the way in which public authorities should set fees and charges, consistent with the principles of HM Treasury's Managing Public Money.

380. The Building Safety Regulator will have a significant number of functions under the Building Act 1984 and regulations made under it, including acting as building control authority for higher-risk buildings and certain other buildings, and overseeing the performance and competence of building control professionals.

381. The Independent Review recommended that the new regulatory authority for higher-risk buildings be funded through a full cost recovery approach. It is appropriate that regulations can make provisions for fees to be charged for Building Safety Regulator activities to support this policy objective in respect of higher-risk buildings, and for fees to be charged where appropriate for other functions (e.g. applications for registration as a registered building inspector).

#### Justification for procedure selected

382. Regulations made under this power will be subject to negative procedure. They will set the arrangements under which charging schemes must operate and fees and charges are set, so will be largely administrative and procedural in nature. Use of the negative procedure is consistent also with the process for the current Charges Regulations (The Building (Local Authority Charges) Regulations 2010). The Government considers that the use of the negative procedure provides an appropriate degree of Parliamentary scrutiny, with the option of a debate should Parliament consider it necessary, for administrative regulations of this kind.

#### **Clause 60(5): Meaning of “occupied and “resident”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Affirmative procedure*

#### Purpose and context

383. The new regulatory regime will regulate by reference to building safety risks including those affecting higher-risk buildings. Most of the obligations on Accountable Persons arising under Part 4 of the Bill start from the point that a higher-risk building becomes occupied. This clause defines the meaning of ‘occupied’ for the purpose of this part of the Bill by reference to the number of dwellings within the building that are occupied by residents. It also defines “residents”.

384. Subsection (5) creates a power for the Secretary of State to amend the definition of both “occupied” and “resident” through regulations via the affirmative procedure.

### Justification for delegation

385. The power to amend the term ‘occupied’ and “residents” in regulations is required to ensure that the regime is adaptable for the future. This provides the flexibility required if the scope of this part of the regime is narrowed or extended as our understanding of building safety risks changes over time.

386. Whilst the new regime as recommended in the Independent Review is focused on occupied residential buildings, future changes to what constitutes a building safety risk may necessitate the need to extend the regime to empty buildings or to other types of buildings such as hospitals or stadia which typically don’t have residential occupiers, requiring the trigger for Part 4 obligations to be amended. The delegated power is necessary to facilitate this.

### Justification for procedure selected

387. Regulations made under this power will be subject to affirmative resolution procedure in both Houses of Parliament as amending the definition of ‘occupation’ and ‘resident’ in the Bill would affect the point at which many of the Part 4 obligations begin to apply. Consequently, it is considered appropriate that the use of the power should be subject to the scrutiny of debates and approvals in both Houses of Parliament.

## **Clause 61(6) and (7): Accountable person**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Affirmative procedure*

### Purpose and context

388. As part of the new regulatory regime, statutory obligations will be placed on the Accountable Person, making them responsible for managing the fire and structural safety of their higher-risk residential building.

389. This clause defines who the Accountable Person is for any given building in scope of the new regime.

390. Subsection (6) creates a power for the Secretary of State to modify provision within Part 4 of the Bill where there is more than one Accountable Person for a building.

391. Subsection (7) gives a power to the Secretary of State through regulations to amend the definition of the Accountable Person.

### Justification for delegation

392. Where there are multiple Accountable Persons, we require a power for the Secretary of State to amend Part 4 of the Bill through regulations. This is to ensure

the regime is correctly adapted to accommodate more than one Accountable Person in a single building.

393. The power to amend the definition of 'Accountable Person' in regulations is required to ensure that the regime is adaptable for the future. The scope of the new regime may change over time. Where new buildings are brought into scope, we require the Secretary of State to have the power to amend the clause to ensure the definition captures the appropriate person to take on the obligations of the Accountable Person.

#### Justification for procedure selected

394. The amendment of a definition could potentially have wide ranging effect as it brings the obligations and sanctions into effect against a wider remit of people that could be captured by any further amendment to this clause. Therefore, it is affirmative procedure to enable adequate scrutiny. The Government considers that it would be appropriate to subject the regulations to the affirmative resolution procedure to ensure both Houses have the opportunity to consider any proposed amendments.

395. Similarly, the modification to Part 4 could impact on the regime and the operation of the regime and relates to the whole regime in occupation. The Government's view is that amending the effect of provisions, in order to enable it to apply to more than one Accountable Person per building, warrants close Parliamentary scrutiny and time for debate. As such, it has proposed that the regulations are subject to the affirmative procedure.

#### **Clause 62(1): Occupation: registration requirement**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

#### Purpose and context

396. The clause makes provision to require the Accountable Person to apply to the Building Safety Regulator to register a higher-risk building before it becomes occupied. Failure to do so is an offence.

397. Subsection (1) gives a power to the Secretary of State to prescribe the circumstances, other than pre-occupation, in which the Accountable Person must apply to register a building and to prescribe the time period within which they must do so. In particular this will allow transitional provisions to be made relating to the registration of existing buildings which are already occupied.

#### Justification for delegation

398. There will be circumstances beyond pre-occupation where it will be appropriate to require the Accountable Person to register with the Building Safety Regulator and the delegated power is required to account for these circumstances. For example,

as the new regime will also apply to large number of existing buildings that are already occupied, the Secretary of State will need a power to require the registration of these buildings. There may also be a circumstance in which an Accountable Person is replaced before registration is complete and it may therefore be appropriate to require re-application.

Justification for procedure selected

399. The provisions to be set out under this power are administrative and procedural in nature and are suitable for the level of scrutiny provided by the negative procedure in both Houses of Parliament.

**Clause 63(5) and (6): Registration of higher-risk buildings**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

Purpose and context

400. To enable an effective approach to the regulation of higher-risk buildings, the Government intends to implement a system of building registration.

401. The registration system requires Accountable Persons to notify the Building Safety Regulator of higher-risk buildings and to provide details about these buildings. The clause requires the Building Safety Regulator to publish a register of higher-risk buildings and makes provision for their removal from the register if they become empty or the building is no longer a higher-risk building.

402. Subsection (5) make provisions for regulations to set out the information that the Building Safety Regulator must record in the register as well as the procedure for removing buildings from the register.

403. Subsection (6) gives the Secretary of State the power by regulations to set out provisions about the application process including the form and content of applications, information and required documentation they must include, withdrawal of an application and the process for doing so.

Justification for delegation

404. Regulations made under this clause will set out administrative requirements only: what information about a building must be provided so that it can be registered; what of that information the register should contain; the procedure for removal of the building from the register where the regime no longer applies to it.

405. It is appropriate that uncontroversial procedural and administrative information of this kind is set out in secondary legislation which allows the flexibility for procedural changes to be made.

#### Justification for procedure selected

406. The provisions to be set out under this power are administrative and procedural in nature and are suitable for the level of scrutiny provided by the negative procedure in both Houses of Parliament.

#### **Clause 64(1): Occupied building: requirement to apply for a certificate**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

#### Purpose and context

407. This clause provides that an Accountable Person must apply for a Building Assurance Certificate. It is our intention that such a certificate, if granted, should last for a specified period of time only and should expire thereafter, requiring the Accountable Person to apply for a new Building Assurance Certificate. Failure to make an application within required time periods will be an offence. Subsection (1) makes provision enabling the Secretary of State to prescribe in regulations the circumstances and time period within which applications must be submitted.

408. Regulations made by virtue of clause 64 subsection (1) will set out the intervals at which an application needs to be made for registration.

#### Justification for delegation

409. It is necessary to take a power to prescribe the periodic interval for Building Assurance Certificate applications to ensure that procedural requirements can align with the operationalisation of the new regime.

#### Justification for procedure selected

410. The provisions to be set out under this power are administrative and procedural in nature and are suitable for the level of scrutiny provided by the negative procedure.

#### **Clause 65(3) and (4): Building assurance certificate**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

#### Purpose and context

411. This clause sets out what the Building Safety Regulator must consider and when it must grant or refuse an application for a Building Assurance Certificate. It provides that where the Building Safety Regulator refuses an application it must notify the Accountable Person.

412. Subsection (3) sets out the statutory provisions that the Building Safety Regulator must assess the Accountable Person's compliance with in order to determine whether or not to grant a Building Assurance Certificate. It lists a number of such statutory requirements and also gives a power to the Secretary of State to specify in secondary legislation any regulations that must also be complied with.

413. Subsection (4) gives a power to the Secretary of State to make provisions regarding Building Assurance Certificates. The regulations will set out the period the Building Assurance Certificate will last, the form and content and the way in which it will be provided to the Accountable Person. The Secretary of State will also have the power to amend the relevant duties on the Accountable Person, the grounds, circumstances and procedures for revising and revoking of the Building Assurance Certificate, as well as the form and content of notifications made by the Building Safety Regulator.

414. A Building Assurance Certificate will act as an assurance to residents that the Accountable Person of their building met certain statutory obligations.

*Justification for delegation*

415. We require a power for the Secretary of State to make provision in regulations that requirements set out in secondary legislation may be added to the list of obligations an Accountable Person must have met to be granted a Building Assurance Certificate. We also require a power to make regulations about Building Assurance Certificates, how long they will last, the procedures for issuing and the grounds for revoking them. Over time the Building Safety Regulator may need to change the Building Assurance Certificate as appropriate to reflect maturing of the sector or the advancement of digital information technology. We want flexibility for the Building Safety Regulator to be able to do this quickly in response to building safety risks, without needing to amend primary legislation.

416. A functional Building Safety Regulator will require broad powers. The negative procedure will allow them to align their regulatory regimes and do it quickly. The primary impact will be on the Building Safety Regulator.

*Justification for procedure selected*

417. The provisions to be set out under this power are administrative and procedural in nature and are suitable for the level of scrutiny provided by the negative procedure in both Houses of Parliament.

**Clause 66(1) and (2): Applications for certification: further provision**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*



### Purpose and context

418. Subsection (1) sets out the information that must accompany an application for a Building Assurance Certificate. It gives the Secretary of State the power to make regulations prescribing information that must be provided about the Accountable Person's Mandatory Occurrence Reporting System and their compliance with information-provision duties to be set out in regulations made under clause 80.
419. Subsection (2) gives a power to the Secretary of State to make provisions regarding applications for the Building Assurance Certificate including the form and content of applications, the ways information should be provided and arrangements relating to withdrawal of applications and information to be provided.

### Justification for delegation

420. Duties on the Accountable Person relating to Mandatory Occurrence Reporting Systems and provision of information to residents will be set out further in regulations, including made under clause 80. We require a power to specify in regulations what information relating to those duties should be provided by Accountable Persons with their applications.
421. We also require a power for the Secretary of State to make provision in regulations about procedural matters which pertain to the Accountable Person applying for the Building Assurance Certificate.
422. Over time the Building Safety Regulator may need to adapt the method it deems appropriate or the particular information, manner and circumstances in which that should be included. We want flexibility for the Building Safety Regulator to be able to do this quickly in response to any emerging issues in building safety, without needing to amend primary legislation.

### Justification for procedure selected

423. The provisions to be set out under this power are administrative and procedural in nature, such as the form and content of the application, and are suitable for the level of scrutiny provided by the negative procedure in both Houses of Parliament.

## **Clause 68(5) and (6): Regulator's power of veto over appointment**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

424. To increase the accountability of dutyholders, the Independent Review recommended that the Accountable Person must nominate a Building Safety Manager with the relevant skills, knowledge, experience and behaviours to carry out the role. In cases where the Building Safety Manager is not an individual, the Accountable Person, must nominate an organisation with capability to meet the

functions of the role, which are to assist the Accountable Person in fulfilling their statutory obligations. The Accountable Person is required to include details of the Building Safety Manager at registration. This clause gives the Building Safety Regulator the power to veto the Accountable Person's appointment of its Building Safety Manager.

425. Subsection (5) enables the Secretary of State to set out the prescribed period of time within which the Building Safety Regulator needs to notify the Accountable Person of its intention to veto the appointment of the Building Safety Manager.

426. Subsection (6) gives the power for these regulations to make provision about notices made in relation to notices under this section. This includes the content, form and delivery of the notices.

#### Justification for delegation

427. We require a power for the Secretary of State to make further detailed provision about content, form and delivery of a notice by the Building Safety Regulator exercising a power of veto of the Building Safety Managers. The Building Safety Regulator will need to ensure that a Building Safety Manager has the required skills, knowledge, experience and behaviours, or in the case of an organisation the requisite capability to manage the building safety risks relating to buildings they work in, which vary in complexity.

428. Over time the Building Safety Regulator may need to adapt the method or criteria it deems appropriate and to tailor the requirements in terms of use of the veto power. We want flexibility for the Building Safety Regulator to be able to do this quickly in response to any emerging issues building safety, without needing to amend primary legislation. We require similar flexibility in relation to notices that the Accountable Person must give under this clause.

429. We also want the Building Safety Regulator to develop a suitable timescale for these notices to be given that is informed by operational considerations.

#### Justification for procedure selected

430. Regulations under subsection (5) and (6) are procedural and non-contentious. Furthermore, the negative procedure will enable an agile response to operational considerations that emerge. We consider it appropriate to be subject to the negative procedure and gives Parliament the appropriate level of scrutiny.

#### **Clause 69(4): Terms of appointment**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

431. The clause sets out the statutory role of the Building Safety Manager with reference to the tenure of such a role. The Building Safety Manager may resign from the post at any time or the Accountable Person may remove the Building Safety Manager if it so wishes.

432. Subsection (4) gives a power to the Secretary of State to set out the form, content and the way in which notice that needs to be given by either the Accountable Person or Building Safety Manager in these circumstances.

### Justification for delegation

433. We require a power for the Secretary of State to make provision in regulations about the form and content of the notice and how the notice should be given to enable flexibility in regarding removal of a Building Safety Manager. This is a statutory role and whilst it is a requirement for every building to have a Building Safety Manager such matters cannot be governed by contract alone but must be flexible enough to reflect the requirements of different circumstances.

434. The Building Safety Manager itself will need to be able to tend its resignation and the requirement of such notice needs to be flexible to reflect changing circumstances such as digital advancements in the sector.

### Justification for procedure selected

435. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament. Regulations made using this procedure would relate to operational detail. The choice of negative procedure is considered to provide for the appropriate level of scrutiny and opportunity for debate, if desired, without requiring a debate on operational details as a matter of course

## **Clause 71(1), (3) and (4): Directions to remove building safety manager or nominated individual**

Clause 71 (1) and (3)

*Power conferred on: Building Safety Regulator*

*Power exercised by: Directions*

*Parliamentary procedure: None*

Clause 71 (3) and (4)

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure (regulations)*

### Purpose and context

436. The Building Safety Manager is a statutory role which can be vetoed by the Building Safety Regulator. The Building Safety Regulator therefore needs to have powers to force the Accountable Person to remove the Building Safety Manager if

it transpires that the Building Safety Manger is causing a breach of the statutory obligations under the regime such that person is not suitable for the role. This will be carried out through a direction of the Building Safety Regulator.

437. Subsection (1) gives a power that the Building Safety Regulator must direct the Accountable Person to remove the Building Safety Manager if it appears to the regulator he is not suitable to carry out the functions of the Building Safety Manager.

438. Subsection (3) deals with specific circumstances where the Building Safety Manager is a corporate body and has nominated an individual to carry out the role. The Building Safety Regulator has the power under this clause to direct the Building Safety Manger to change this person. This subsection gives the Secretary of State the power to set out the circumstances in which the regulator can do so.

439. Subsection (4) gives a power to the Secretary of State to set out in regulations the form, content and delivery of the direction to the Accountable Person or the Building Safety Manager.

#### Justification for delegation

440. The Accountable Person will need to ensure that a Building Safety Manager is carrying out its role in accordance with its appointment and the requirements of the regime. A power of direction over the Accountable Person and Building Safety Managers who are body corporates for the removal of the Building Safety Manager will enable the Building Safety Regulator to effectively regulate by intervening directly where the Building Safety Manager has failed to fulfil the functions assigned to them under the new regime.

#### Justification for procedure selected

441. The regulations will make provision about the form, content and manner of directions to the Accountable Person and Building Safety Manager. The regulations also make provision for circumstances for the regulator to direct removed of the nominated individual; they will therefore be procedural and administrative in nature, and we expect their contents to be uncontroversial. We consider that the negative procedure therefore provides the appropriate degree of Parliamentary scrutiny.

442. The delegation of this power to the Building Safety Regulator to issue directions is justified as the Building Safety Regulator needs to be able to respond and in some circumstances act quickly to remove the Building Safety Manager, or its nominated individual, to ensure the overall safe management of the building.

### **Clause 72(2): Assessment of building safety risks**

*Power conferred on: Building Safety Regulator*

*Power exercised by: Directions*

*Parliamentary procedure: None*

### Purpose and context

443. The Independent Review identified that a new approach, built on existing risk management principles, was needed to manage risks to residents of higher-risk buildings and ensure that the whole building is properly, regularly and proactively considered by a dutyholder against the principles of what it is reasonably practicable to do to reduce risk.

444. Clause 72 provides that the Accountable Person must undertake an assessment of the building safety risks, in order to comply with their obligations in respect of managing the building. Further assessments should be carried out at regular intervals and where the Accountable Person suspects the assessment is no longer valid or they become aware of a significant change to the building.

445. Subsection (2) gives a power to the Building Safety Regulator to direct an Accountable Person to undertake a further assessment of the building safety risks.

### Justification for delegation

446. The Building Safety Regulator needs the power, to be used on a case by case basis, to direct an Accountable Person to undertake a further assessment where necessary. It is not possible to determine the exact circumstances in which the Building Safety Regulator would direct the Accountable Person to undertake a further assessment, but it is likely to be as a result of deficiencies in how the particular Accountable Person has assessed the risks in his/her building or where an incident in another building reveals a major incident scenario not previously considered or where recommendations have been made following a major accident or public inquiry.

447. Undertaking a suitable and sufficient risk assessment of the building safety risks is an important initial step in the systematic approach that the Accountable Person will need to adopt to achieve the outcome of managing the building safely. It is important therefore that the regulator has the ability to give case-specific directions so that such assessments can be carried out where necessary.

### Justification for procedure selected

448. The power to issue directions is an important power for the Building Safety Regulator to use on a case by case basis. We do not consider it is appropriate for case by case decisions of this nature to be subject to Parliamentary scrutiny before the Building Safety Regulator is able to act.

### **Clause 73(3): Steps to prevent a major incident**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

449. Within the context of their responsibilities, the Accountable Person must take steps necessary to manage building safety risks to ensure the safety of residents from major incident. As with existing risk management regimes in law, we intend that these steps are supported by a series of principles ordered to form a best practice approach to risk management, from most efficient to least efficient, the most efficient being to avoid risk, to aid the Accountable Person in their decision making.

450. Subsection (3) gives a power to the Secretary of State to set out these principles in regulations which the Accountable Person and the Building Safety Regulator will need to follow when assessing whether risks are being appropriately managed.

### Justification for delegation

451. The protection principles may change over time, owing to technological advances or as the regime matures and so it is not appropriate for them to be set out in primary legislation. Some flexibility in the principles is therefore needed so that requirements can be adapted according to such developments.

### Justification for procedure selected

452. The power to make regulations under this provision is subject to the negative resolution procedure in both Houses of Parliament. Similar sets of principles which list considerations that need to be borne in mind when assessing whether risks are being appropriately managed already exist in secondary legislation subject to the negative procedure. We therefore consider the negative procedure is the appropriate level of scrutiny.

## **Clause 73(5): Steps to prevent a major incident**

*Power conferred on: Building Safety Regulator*

*Power exercised by: Directions*

*Parliamentary procedure: None*

### Purpose and context

453. Clause 73 provides that within the context of their responsibilities, the Accountable Person must take steps necessary to manage building safety risks to ensure the safety of residents from major incident and to reduce the severity of any such major incident.

454. Subsection (5) gives a power to the Building Safety Regulator to direct an Accountable Person to take specified steps for the purposes of meeting the duty under Subsection (1).

### Justification for delegation

455. The Building Safety Regulator needs the power, to be used on a case by case basis, to direct an Accountable Person to take specified steps to manage building safety risks for the purposes of preventing a major incident and/or reducing their effects. The Building Safety Regulator will determine whether the duties under Subsection (1) are met through an assessment of a building's Safety Case Report, which is the mechanism for demonstrating whether the duty is met.

### Justification for procedure selected

456. The power to issue directions is an important power for the Building Safety Regulator to use on a case by case basis. We do not consider it is appropriate for case by case decisions of this nature to be subject to Parliamentary scrutiny before the Building Safety Regulator is able to act.

### **Clause 74(3): Safety case report**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

457. The Independent Review recommended that new responsibilities should be placed on dutyholders to manage building safety risks through proactively engaging with a building's residents.

458. Clause 74 subsection (1) places a duty on the Accountable Person to produce a Safety Case Report that demonstrates that they have both assessed the building safety risks and taken all reasonable steps to prevent a major incident arising from these risks and to reduce the severity of any such incident. It sets out key information that the Safety Case Report must contain.

459. Subsection (3) gives a power to the Secretary of State to set out in secondary legislation, further requirements about the form and content of the Safety Case Report.

### Justification for delegation

460. The Bill sets out the purpose and scope of the Safety Case Report. Subsection (3) gives the Secretary of State power to set out further detail of the form and content of that report which will be technical and administrative information. We do not consider it is appropriate for detailed information as to the form and content of Safety Case Reports to be included in primary legislation.

461. Additionally, the type of information required may change over time as our understanding of different types of risk changes.

### Justification for procedure selected

462. The regulations will make provision about the form and content of Safety Case Reports; they will therefore be procedural and administrative in nature, and we expect their contents to be uncontroversial. We consider that the negative procedure in both Houses of Parliament provides the appropriate degree of Parliamentary scrutiny.

### **Clause 75(3): Notification and provision of report to the regulator**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

463. The Independent Review recommended that new responsibilities should be placed on dutyholders to manage building safety risks through proactively engaging with a building's residents.

464. Clause 74 subsection (1) places a duty on the Accountable Person to produce a Safety Case Report, clause 75 subsection (1) requires the Accountable Person to notify the Building Safety Regulator that the report has been completed. This is in order for the Building Safety Regulator to decide whether the Safety Case Report needs to be assessed at that point.

465. Subsection (3) gives the Secretary of State the power to set out in secondary legislation the form and process that such a notification will need to follow.

### Justification for delegation

466. Information about the form and process of notifying the Building Safety Regulator about updates to Safety Case Reports is solely administrative and procedural. It is appropriate therefore that this level of information is set out in delegated legislation.

### Justification for procedure selected

467. This power is concerned with specifying the form and process of providing notifications to the Building Safety Regulator; it is procedural and administrative in nature and the Government considers that it is appropriate to apply the negative procedure in both Houses of Parliament.

### **Clause 77(1): Duty as regards buildings insurance**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*



### Purpose and context

468. This clause creates a power for the Secretary of State to require in regulations that an Accountable Person for a higher-risk building must hold adequate insurance to cover losses associated with building safety risks (as defined in clause 16(1)). This subsection also provides that regulations may prescribe the kind of losses that the insurance will have to cover.

469. Subsection (2) sets out that this clause is complied with if the Accountable Person has in place a contract for building insurance which complies with the requirements set out in regulations.

### Justification for delegation

470. The Government recognises the need for insurance against the materialisation of building safety risks, and the subsequent funding of remediation work or compensation. It is appropriate to have a delegated power to allow the Secretary of State to consult with the insurance sector and public on matters in determining the adequacy of insurance in those regulations, and the kind of losses arising as a result of building safety risks that insurance ought to cover.

### Justification for procedure selected

471. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament. They will set out the characteristics that insurance contracts must contain in order to be considered adequate for these purposes. They may also set out the kinds of losses arising as a result of building safety risks that the insurance ought to cover. These are technical matters which it will be appropriate for Government to have the flexibility to alter based on changes in the insurance market.

472. We anticipate that regulations made under this procedure will be uncontroversial and will not require a high degree of Parliamentary scrutiny, although of course this scrutiny is possible if Parliament wishes to debate the regulations.

## **Clause 78(1) and (2): Mandatory reporting requirements**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

*Power conferred on: Building Safety Regulator*

*Power exercised by: Direction*

*Parliamentary procedure: None*

### Purpose and context

473. Subsection (1) requires Building Safety Managers to report certain information to the Building Safety Regulator. The Secretary of State is given the power to specify

the circumstances in which reports must be made; the information that must be reported; and the time by which reports must be made.

474. We intend to use this power to prescribe a list of safety-related incidents which must be reported, as well as the information that the report must contain, the manner of reporting, and time periods for making the report (which may vary between incidents).

475. Subsection (2) gives a power to the Building Safety Regulator to specify in a direction the manner in which the Building Safety Manger must submit reports. We expect that this power will be used to specify that reports must be submitted through an online portal.

#### Justification for delegation

476. The nature of the information that must be reported under the Mandatory Occurrence Reporting System is subject to change over time in accordance with technical developments in safety standards and safety practices. Some flexibility in the list of occurrences to be reported is therefore needed so that requirements can be adapted according to such developments. Similarly, it may be necessary to adjust the time period in which reports must be made, the information that needs to be reported, and the manner of reporting.

#### Justification for procedure selected

477. Regulations made under this clause will either be technical (changing the list of occurrences) or procedural (changing the time for reporting/information that must be reported) in nature. In both cases the Government considers that the negative procedure in both Houses of Parliament provides the appropriate level of scrutiny.

478. The direction-making power only gives the Building Safety Regulator the power to specify how information should be reported – this will most likely be through an online portal. We do not consider any Parliamentary procedure to be necessary for this uncontroversial power.

### **Clause 79(1) to (4): Keeping information about higher-risk buildings**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

#### Purpose and context

479. To ensure more effective building safety management throughout a building's lifecycle, the Independent Review recommended that a golden thread of good quality information should be created and maintained for each building.

480. Clause 79 places a requirement on the Accountable Person to gather, keep, maintain and update certain required information about the building they are responsible for. Subsection (1) gives the Secretary of State the power to set out in

regulations what the information is that should be kept in this manner and what standards the information must be kept in accordance with.

481. Subsections (2) and (3) allow regulations to set out particular documents and information that the Accountable Person must keep copies of, and that s/he must obtain, as far as possible, if s/he does not have it. These documents/information must be kept in accordance with the standards that will be prescribed in regulations made under subsection (1).

482. Subsection (4) gives the Secretary of State the power to issue regulations setting out the points in time when these information-related duties will apply.

#### Justification for delegation

483. The Government intends to list the documents and information that will be classified as the golden thread of information, and the standards this information should adhere to.

484. The nature of the information and documents that must be stored in the golden thread of information will be subject to change over time in accordance with technical developments in safety standards and safety practices. Some flexibility in the listed information and documents required is therefore needed so that requirements can be adapted according to such developments. Similarly, the standards that must be adhered to are technical and procedural in nature. It is appropriate therefore that this level of information is set out in delegated legislation.

485. We also require further consultation with stakeholders to determine the documents and information that will be classified as the golden thread of information and to determine the standards the golden thread of information will have to follow. The Government has already engaged with some stakeholders and has determined that the information and standards are likely to be uncontroversial.

486. However, we need to conduct further research and standards to determine both the precise specificity of the level of information required and delineate specific standards. In particular, we are consulting stakeholders to identify areas where the existing British and International standards are either non-existent or unclear and where we would therefore have to provide guidance.

487. We also want the Building Safety Regulator to develop a suitable timescale for when these obligations must be complied with that is informed by operational considerations.

#### Justification for procedure selected

488. Given that the information to be covered by the golden thread requirements, and the standards to which it is to be kept, will be technical and administrative in nature, we consider that the level of scrutiny provided by the negative procedure is appropriate. In addition, as these regulations may need to be updated reasonably frequently as the regime matures and due to technological developments, we consider that the negative procedure will enable us to do this in a timely manner,

without preventing the greater Parliamentary scrutiny available from holding a debate where this is considered appropriate by Parliament.

**Clause 80(1) to (3): Provision of information etc to the regulator, residents and other persons**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

*Purpose and context*

489. To ensure more effective building safety management throughout a building's lifecycle, the Independent Review recommended that a golden thread of good quality information should be created and maintained for each building. In certain situations, the Accountable Person will need to share some or all of this information.

490. The Accountable Person will need to share this information, in particular with the Building Safety Regulator, for the purposes of checking compliance and obtaining information about buildings, with residents and flat owners, and also with other persons as set out in regulations.

491. Amongst other things the Accountable Person will also be required to proactively provide building safety information and documentation to all residents and owners of flats in the building. The information and documentation that must be provided to residents, owners of flats or the Building Safety Regulator, may be specified in regulations made under this clause. The Accountable Person will also be required to provide this, at times prescribed through regulations in this clause, The power enables the Secretary of State to further provide in regulations the way in which information or documents must be given, the form in which they are given, including a requirement that information or documents are given in an accessible. The clause also allows regulations to set out 'digital standards' with which the information and documentation must comply.

492. The clause also provides a power to make exceptions within the regulations as to duties these regulations.

493. This duty relates to a number of other clauses:

- a. Clause 81 which provides for regulations to be made as to the information that must be passed on by an outgoing Accountable Person to their successors, so that the golden thread of information is maintained;
- b. Clause 83 which provides that an Accountable Person must provide further information about the building to any resident or owner on request. The list of information that must be made available on request will be set out in secondary legislation; and
- c. Clauses 84 and 85 on complaints handling which requires all Accountable Persons and the Building Safety Regulator to have an operational complaints process.

### Justification for delegation

494. Defining the prescribed circumstances for sharing information and the time period by which this information must be shared will require procedural detail which is not appropriate for primary legislation. Nor would it be appropriate to set out the actual information that must be provided. The prescribed circumstances may change over time as ownership structures of properties in scope alter and the information that must be provided may need to be varied in the light of experience, so it is appropriate to have the flexibility to do so without requiring the amendment of primary legislation.

495. The clause also provides a power to make exceptions within the regulations as to duties these regulations will impose, which is a flexibility required to respond to operational experiences of the regime.

496. These regulations will need to be developed in consultation with building owners and other stakeholders, to ensure the regulation sufficiently captures all circumstances in which responsibility for a building changes and identifies when the information should be shared.

### Justification for procedure selected

497. The regulations will make provision about the Accountable Person sharing information and documentation, including matters like the nature and form of the information/documentation, time frame for sharing and the way in which it must be given and standards it must meet together with exemptions from meeting these duties together with to whom it must be shared. Furthermore, the regulations will provide for any express exceptions to the duties imposed under the regulations. This provision is procedural and operational in nature. We therefore consider that the level of scrutiny afforded by the negative procedure in both Houses of Parliament is appropriate.

### **Clause 81(2): Provision of information etc to a new accountable person**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

498. To ensure more effective building safety management throughout a building's lifecycle, the Independent Review recommended that a golden thread of good quality information should be created and maintained for each building.

499. In certain situations, the Accountable Person will need to share this information. This clause provides for an outgoing Accountable Person to have to provide specified golden thread of information to new Accountable Persons.

500. Clause 81 gives the Secretary of State the power to make regulations setting out what information must be shared, and by when. Regulations may also set out the 'digital standards' that must be applied to that information.

Justification for delegation

501. Defining the prescribed information, the standards that it must comply with and the time period by which this information must be shared will require procedural detail which is not appropriate for primary legislation. It is appropriate to have the flexibility to do so without requiring primary legislation.

502. These regulations will need to be developed in consultation with stakeholders, to ensure that the required standards reflect industry practice.

Justification for procedure selected

503. The regulations will make provision about the prescribed information, the time frame for sharing information and the standards which apply to the information. These provisions are procedural in nature and not likely to be controversial. We therefore consider that the level of scrutiny afforded by the negative procedure is appropriate.

**Clause 82(4), (7) and (9): Residents' engagement strategy**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure and affirmative procedure*

Purpose and context

504. The Independent Review found that residents did not have a strong enough voice in the safe management of their homes and specifically that they often did not have the chance to offer views and participate in the decision making process.

505. This clause requires all Accountable Persons to produce a Residents' Engagement Strategy for promoting the participation of residents in building safety decisions made about their building. The clause provides that the Residents' Engagement Strategy must set out:

- a. The information that will be provided to residents and owners about decisions relating to the management of the building;
- b. The aspects of those decisions that the Accountable Person will consult them about;
- c. The arrangements for obtaining and taking account of their views; and
- d. How the appropriateness of the Accountable Person's methods for promoting participation will be measured and kept under review.

506. Subsection (4) provides that an Accountable Person must review the Residents' Engagement Strategy at prescribed intervals. Those prescribed intervals will be set

out in regulations made by the Secretary of State. Regulations made under subsection (4) will be subject to the negative procedure.

507. Subsection (7) gives the Secretary of State the power by regulations to make further provisions in relation to the requirements of the Residents' Engagement Strategy and the way in which a strategy is to be provided to residents. Regulations made under subsection (7) will be subject to the negative procedure.

508. Subsection (9) provides that the Secretary of State may by regulations amend subsection (3) which sets out on the face of the Bill the information that must, as a minimum, be included in the Residents' Engagement strategy. Regulations made under subsection (9) will be subject to the affirmative procedure.

#### Justification for delegation

509. The regulation making power under subsection (4) will be used to specify how frequently an Accountable Person must review and reissue the Residents' Engagement Strategy for which they are responsible. The frequency of review will be determined on the basis of experience and so may need to be amended over time to ensure that the right balance is struck between it being a live document and leaving sufficient time between revisions and reissue to enable approaches to participation and involvement to become properly established. Allowing the review frequency to be amended by regulations will enable any such change to be made relatively quickly and easily.

510. The regulation making power under subsection (7) will be used to provide clear minimum requirements for the production and delivery of a Residents' Engagement Strategy so that everyone has some opportunity to participate in the decision-making process for their home. This will require a level of detail, and examples that would not be suitable for inclusion in primary legislation. It is also likely to evolve over time on the basis of experience and good practice so allowing the minimum requirements to be amended via the negative procedure will enable any such changes to be made relatively quickly and easily.

511. In addition, the regulations might need to be updated over time to adjust to evidence from experience and emerging issues from across the sector.

512. The regulation making power under subsection (9) will be used if it is decided that it is necessary to make any amendments to subsection (3) which sets out on the face of the Bill the information that must, as a minimum, be included in the Residents' Engagement Strategy.

#### Justification for procedure selected

513. For subsection (4) any decision to amend the frequency at which an Accountable Person must amend their Residents' Engagement Strategy would only be made following consultation with stakeholders in the sector. It is a relatively technical issue which is not expected to be controversial, therefore we believe that the negative procedure is appropriate

514. For subsection (7) any regulations will be developed in consultation with building residents, managers and owners. This will require a level of detail, and examples that would not be suitable for inclusion in primary legislation. In addition, the regulations might need to be updated over time to adjust to evidence from experience and emerging issues from across the sector or to take account of evolving good practice. Given that any regulations would be developed in consultation with a wide range of stakeholders, it is unlikely that any changes will be controversial, therefore it is suggested that the negative procedure is appropriate for these provisions.

515. Subsection (9) gives the Secretary of State power to make regulations which would amend the provisions in subsection (3) of this clause. As this would involve using regulations to amend primary legislation, it is suggested that the affirmative procedure would be appropriate for any changes made under this subsection. This is because the subsection sets out the top-level purpose and coverage for the Residents' Engagement Strategy that are unlikely to need change or revision that often. In such cases any additions would need greater scrutiny to ensure that they will deliver real further benefit to residents and are justifiable in terms of new demands on Accountable Persons.

#### **Clause 83(1), (3) and (4): Requests for further information**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

#### *Purpose and context*

516. The Independent Review noted the importance of ensuring that residents have access to information about their building and the safety measures in place. It recommended that the dutyholder for a building should be responsible for proactively providing an accessible summary of building safety information to all residents.

517. If requested by a resident, this clause provides that the Accountable Person should provide further and more detailed information/documentation about the building's safety systems and subsection (1) give the Secretary of State the power to prescribe in regulations the further information or documentation that can be requested.

518. Subsection (3) gives the Secretary of State the power by regulations to make provisions about the way such information (or a copy of a document) must be given and the form of this information.

519. Subsection (4) gives the Secretary of State the power to make regulations which set out the circumstances when an Accountable Person is exempt from the requirements in this provision to make available a copy of a document or some or all of the requested information by a resident.



### Justification for delegation

520. The list of prescribed information/documentation may change over time. It can be amended more easily if the list is specified in secondary legislation. We require a dynamic regime. The way and form in which information/documentation is provided needs to be made in regulations to allow for flexibility to ensure that the Government can refine and make changes in future to improve the effectiveness of this clause in response, once the regime is in place. It is for the same reason that we need flexibility in the future for the circumstances in which an Accountable Person will not provide information/documentation.

### Justification for procedure selected

521. Regulations under this provision are operational in nature; as they cover the type and content, form and the way in which information is given and well as when information or document need not be shared. The Government considers that the negative procedure gives Parliament the appropriate level of scrutiny and opportunity for debate if desired, whilst ensuring that operational matters are not debated automatically.

### **Clause 84(3) and (4): Complaints procedure: accountable person**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

522. The Independent Review recognised that residents generally do not have a strong enough voice in the safe management of their homes, finding it difficult to get their safety concerns addressed by building management.

523. This clause obligates the Accountable Person to establish, and the Building Safety Manager to operate, a complaints process. This requirement is designed to address the findings of the Independent Review.

524. Subsection (3) gives the Secretary of State the power by regulations to make further provisions in relation to the complaints process.

525. Subsection (4) allows in particular to make provision in regulations for how to make a complaint, timescales for complaint processing and response, and when the complaint must be referred to the Building Safety Regulator.

### Justification for delegation

526. It is intended that regulations will be used to provide clear minimum requirements for the establishment and operation of an adequate complaints process, covering areas such as the information to be provided to and by residents, the approach Accountable Persons will take to triaging concerns by severity and urgency, the appropriate recording and investigation of complaints, and handling of the different

circumstances under which concerns have to be escalated to the Building Safety Regulator. This will require a level of technical detail, scenarios and examples that would not be suitable for inclusion in primary legislation.

527. The regulations will also need to be revised over time to adjust to evidence from experience and emerging issues from across the sector.

Justification for procedure selected

528. These regulations will be in relation to operational matters and will be developed in consultation with building residents, managers and owners. Clause 11 also includes a requirement to consult the residents' panel before making these regulations. As such, this procedure enables the regime to be agile in responding swiftly to consultation. The Government therefore believes that a negative procedure is the appropriate level of scrutiny in this case.

**Clause 85(3) and (4): Complaints procedure: regulator**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

Purpose and context

529. The Independent Review recognised that residents generally do not have a strong enough voice in the safe management of their homes, finding it difficult to get their safety concerns addressed by building management.

530. Clause 84 requires the Accountable Person to establish, and the Building Safety Manager to operate, a complaints process. This requirement is designed to address the findings of the Independent Review.

531. Clause 85 requires the Building Safety Regulator to establish and operate a complaints procedure to handle residents' safety concerns escalated to the Building Safety Regulator either directly by residents or via the Building Safety Manager or reassigned from other bodies such as ombudsmen or redress schemes.

532. Subsection (3) gives the Secretary of State the power by regulations to make provisions in relation to setting up and operating the Building Safety Regulators' complaints procedure.

533. Subsection (4) allows in particular to make provision in regulations for timescales for complaint processing and response, and action that the regulator should consider taking in response.

Justification for delegation

534. It is intended that regulations under this clause will be used to provide a clear framework of requirements to the Building Safety Regulator for the establishment and operation of their complaints process. These will cover areas such as the

information to be provided by residents, the steps the Building Safety Regulator can take on receipt of an escalated safety concern, their approach to triaging concerns by severity and urgency and to handling and investigating them as well as the appropriate recording of safety concerns and reasonable timeframes for the Building Safety Regulator to consider and complete the different stages of handling them.

535. This will require a fair amount of detail and potentially worked examples that would not be suitable for inclusion in primary legislation. The regulations will also need to be revised over time to adjust to evidence from experience and emerging issues from across the sector.

#### Justification for procedure selected

536. These regulations will be developed in consultation with building residents, managers and owners and the new Building Safety Regulator residents' panel (as required by clause 11). As such, this procedure enables the regime to be agile in responding swiftly to consultation. The Government therefore believes that a negative procedure is the appropriate level of scrutiny in this case.

#### **Clause 86(4) and (8): Duties on residents**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure and Affirmative procedure*

#### Purpose and context

537. This clause sets out a range of duties that residents of a higher-risk building must comply with. Where it appears to an Accountable Person that a resident is not complying with one or more of their duties, then the Accountable Person may serve a notice on the resident. Any such notice must specify:

- a. The duty the alleged contravention relates to and the alleged contravention;
- b. The steps that the resident should take in order to remedy the contravention and the deadline for doing so; and/or
- c. Anything that the resident should refrain from doing to avoid further contraventions of the duty in question.

538. The notice must also explain what may happen next if the resident fails to comply with the notice. Subsection (4) provides that the Secretary of State may make regulations, negative procedure, about notices under this section, including:

- a. Provision about the form of a notice and the way it is to be given; and
- b. Further provision about the content of the notice.

539. The clause also provides that the Secretary of State may make regulations to change the duties that residents of a higher-risk building must comply with and the definitions of the terms 'relevant resident's item' and 'relevant safety item', as used

in the clause. Those regulations, made under subsection (8), will be subject to the affirmative procedure in both Houses of Parliament.

Justification for delegation

540. Regulations made under subsection (4) will make detailed provision about notices, including matters such as the format of notices, how they are to be given, their content, and so on. It would not be appropriate to set out that level of detail in primary legislation, and the provisions may need to be changed over time as the regime matures.

541. Any regulations made under subsection (8) to amend the duties of residents will be subject to the affirmative procedure. The power could be used, for example, where a review of the impact of the legislation identified a need to amend the duties set out on the face of the Bill, in order to ensure the regime is working effectively to keep residents safe.

542. The power under subsection (8) could also be used to amend the definition of certain terms used in the clause, thus changing the scope of the duties placed on residents. Again, this might be as a result of operational experience.

Justification for procedure selected

543. Regulations about notices under subsection (4) will be non-controversial and will relate to the form of the notice, how it should be served and the content of any such notice. Therefore, we consider that the negative procedure is appropriate.

544. Regulations about resident duties or definitions under subsection (8) could result in new or different obligations being placed on residents of higher-risk buildings. Therefore, it is proposed that they will be subject to the affirmative procedure, to provide for a higher degree of Parliamentary scrutiny.

**Clause 89: Building safety charges – new section 17G(5) and (6) of the Landlord and Tenant Act 1985: “Building safety charges”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

Purpose and context

545. This clause amends the Landlord and Tenant Act 1985 and inserts a mechanism for recovering costs incurred related to meeting statutory obligations of the new regime, termed ‘building safety charges’. These could become payable under long leases of dwellings in higher-risk buildings.

546. The purpose of the building safety charge is to enable the Accountable Person to recover costs incurred directly or indirectly from leasehold residents of higher-risk buildings. These costs could include the remuneration associated with the

Building Safety Manager or works carried out to mitigate against risks identified in the Safety Case Report.

547. Section 17G provides that a landlord may demand a building safety charge as part of or in addition to the tenant's ground rent and sets out the costs which are to be considered as a building safety charge.

548. Subsections (5) and (6) gives the Secretary of State the power to prescribe in regulations by negative procedure 'building safety measures', this could for example include the appointment of the Building Safety Manager or costs in relation to works required under the safety case regime. The term 'prescribed building safety measures' is used in sections 17A, 17H, 17O and 17T.

#### Justification for delegation

549. This Bill makes substantial changes to the management and maintenance of a building in scope with regards to managing building safety risks. Therefore, it is necessary to take a power to allow for the recovery of charges from leaseholders and to ensure that the types of measures to be included in the charge aligns with the Bill requirements through secondary legislation. This will give the Secretary of State the opportunity to consult with the public on those prescribed measures to be included in the charge.

#### Justification for procedure selected

550. Regulations under section 17G(5) and (6) will be subject to the negative procedure. This is considered suitable as the power is limited to specifying the measures encompassed within the statutory obligations.

### **Clause 89: Building safety charges – new section 17H(6) and (7) of the Landlord and Tenant Act 1985: “Building safety charges: landlord obligations”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Affirmative procedure*

#### Purpose and context

551. New section 17H sets out the obligations on the landlord in relation to the form, content, notification, accounting structure of the building safety charge demand which could be served on the tenants (leaseholders) in higher-risk buildings.

552. The purpose of the clause is to ensure that the landlord complies with requirements that are already provided for under section 17 the Landlord and Tenant Act 1985 albeit in with respect of the building safety charge.

553. Subsection (6) of section 17H give the Secretary of State the power to make regulations to amend subsections (1) to (3) to alter the landlord's obligations applicable when a landlord intends to or require a tenant to pay a building safety charge.

554. Subsection (7) of section 17H enables the Secretary of State, when making regulations under section 17H(6), to make different provisions for different circumstances and make consequential, supplementary, incidental etc provisions. Such regulations will be made according to the affirmative procedure.

Justification for delegation

555. The clause enables the amendment of the requirements of the building safety charges. Over time this may change as the management of building safety risks in the sector matures or requirements under the regime change.

556. Therefore, it is necessary to take a power to amend how the building safety charge is set or to change the period of notification allowed for the recovery of charges from leaseholders and to ensure that the types of measures to be included in the charge aligns with the Bill requirements through secondary legislation.

557. This will give the Secretary of State the opportunity to consult with the sector on procedural requirements of the charge.

Justification for procedure selected

558. Regulations under section 17H(6) and (7) will be subject to the affirmative procedure in both Houses of Parliament as the effect of this power may be to substantively amend the obligations in primary legislation where changes to the manner in which charges are raised are deemed appropriate. We consider this level of Parliamentary scrutiny is appropriate in this case.

**Clause 89: Building safety charges – new section 17K(4) and (5) of the Landlord and Tenant Act 1985: “Limitation of building safety charges: consultation requirements”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

Purpose and context

559. Clause 89 inserts new sections into the Landlord and Tenant Act 1985, providing that the contribution to building safety costs that a tenant is required to pay is limited unless consultation requirements have been complied with, or a Tribunal has dispensed with those requirements. If the works are urgent or the building is in special measures, this limitation will not apply.

560. The circumstances and the amount in which building safety costs can be limited will be prescribed in regulations, through powers conferred on the Secretary of State as per section 17K(4) and (5).

Justification for delegation

561. It is necessary to take a power to detail how the building safety charge is to be limited through regulations to allow for legislation to be developed through consultation with the sector. It also allows for the measures to be amended in the future where inflation and the actual cost of works or agreements increases.

Justification for procedure selected

562. Regulations under section 17K(4) and (5) will be subject to the negative procedure in both Houses of Parliament. This is considered suitable as the regulations will align with the consultation regulations under section 20 and 20ZA of the Landlord and Tenant Act 1985 and, as such, will not be controversial.

563. These arrangements are to ensure that leaseholders have the same rights to be consulted in relation to significant costs to be incurred on building safety measures as they enjoy in relation to service charge expenditure.

**Clause 89: Building safety charges – new section 17L(3) and (4) of the Landlord and Tenant Act 1985: “Consultation requirements: supplementary”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

Purpose and context

564. Clause 89 inserts new sections into the Landlord and Tenant Act 1985, regarding requirements to consult with leaseholders in relation to long term qualifying building safety works or agreements. For long term building safety works and agreements under the Bill, the Tribunal may dispense with such consultation requirements.

565. The power to make regulations on consultation requirements are detailed in section 17L(3) and may include such matters as details and estimates of the proposed works or agreements, invitation to relevant persons to propose contractors, to have regard to tenant observations including those of a recognised tenants association and to give reasons in prescribed circumstances for carrying out those works as set out in section 17L(4).

Justification for delegation

566. It is necessary to take a power to detail requirements for consultation on long term qualifying building safety works or agreements through regulations to allow for legislation to be developed and aligned with existing leasehold legislation.

567. It allows for the Secretary of State to consult with the sector on such procedural requirements and enables legislation to respond to developments in the sector over time.

### Justification for procedure selected

568. Regulations under section 17L(3) and (4) will be subject to the negative procedure in both Houses of Parliament. This is considered suitable as the regulations will align with the consultation regulations under sections 20 and 20ZA Landlord and Tenant Act 1985 and, as such, will not be controversial.

569. These arrangements are to ensure that leaseholders have the same rights to be consulted in relation to significant costs to be incurred on building safety measures as they enjoy in relation to service charge expenditure.

### **Clause 89: Building safety charges - new section 17M(3) of the Landlord and Tenant Act 1985: “Consultation requirements: urgent cases”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

570. Clause 89 inserts new sections into the Landlord and Tenant Act 1985. New section 17M ensures that the consultation requirements do not cause a delay in cases where there is an urgent need for building safety works to be carried out. This is where building safety works are required in the circumstance where a compliance notice or an urgent works notice has been issued by the Building Safety Regulator.

571. In these cases, an exemption notice must be issued to tenants and the clause sets out the procedure that must be undertaken by the Accountable Person.

572. An exemption notice, in the prescribed form, and certified by the Accountable Person, must be sent out to all tenants affected. The method of sending may include via email.

### Justification for delegation

573. It is necessary to take a power to prescribe the way in which a notification is given to ensure that procedural requirements can align with the operationalisation of the new regime.

574. It also enables legislation to respond to developments, such as digital technology over time.

### Justification for procedure selected

575. Regulations under section 17M(3) will be subject to the negative procedure in both Houses of Parliament. This is an operational matter involving transcribing relevant matters into a form of questions for completion and accompanying information that will be accessible and that will facilitate provision of all relevant information to tenants.



**Clause 89: Building safety charges - new section 17O(4) and (5) of the Landlord and Tenant Act 1985: “Limitation of building safety charges: excluded costs”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

*Purpose and context*

576. Clause 89 inserts new sections into the Landlord and Tenant Act 1985. Section 17O relates to limiting the costs that can be recovered through the building safety charge.

577. Subsection (4) of section 17O give the Secretary of State the power to make regulations to prescribe costs that are irrecoverable through the building safety charge.

578. Subsection (5) enables the Secretary of State, when making regulations under section 17O(4), to make different provision for different circumstances and make consequential, supplementary, incidental etc provisions. Such regulations will be made according to the negative procedure in both Houses of Parliament.

*Justification for delegation*

579. It is necessary to take a power to prescribe costs to be excluded from the building safety charge as our intention is that the building safety charge should be fair and proportionate on tenants. Currently, the extent of the works that will be carried out on buildings in scope is unknown, so it is necessary to take a power to potentially limit the cost that has to be borne by tenants.

580. The Government is clear that leaseholders should not have to face unmanageable costs, and if alternative solutions are found to fund some of the building safety costs, the ability to limit the landlord's ability to potentially recover such costs twice is required.

*Justification for procedure selected*

581. The negative procedure is considered appropriate. It is anticipated that the costs to be excluded will reflect the forms of funding that may developed and, as such will not be controversial, but will help to ensure that such funds are secured and properly applied.

**Clause 89: Building safety charges - new section 17S(2) and (5) of the Landlord and Tenant Act 1985: “Notice to accompany demands for building safety charges”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

582. Clause 89 inserts new section 17S into the Landlord and Tenant Act 1985, pertaining to notices which must accompany a demand for building safety charges.

583. Subsection (2) of section 17S gives the Secretary of State the power to make regulations to prescribe requirements as to the form and content of the notice which will cover the rights and obligations of the tenants in relation to those building safety charges.

584. Subsection (5) of section 17S enables the Secretary of State, when making regulations under section 17S(2), to make different provision for different circumstances.

### Justification for delegation

585. It is necessary to take a power to prescribe the form and content of notices and allows for bespoke arrangements to deal with circumstances in relation to obligations required by the Bill.

586. It allows for the Secretary of State to consult with the sector on such requirements and enables legislation to respond to developments in the sector over time.

### Justification for procedure selected

587. The negative procedure in both Houses of Parliament is appropriate as this is an operational matter and in line with an existing power and regulations made under section 21B of the Landlord and Tenant Act 1985 that provide for a summary of rights and obligations to be given to a tenant where a service charge demand is served.

## **Clause 89: Building safety charges – new section 17U(9) and (10) of the Landlord and Tenant Act 1985: “Building safety charge contributions to be held on trust”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

588. Clause 89 inserts new sections 17U into the Landlord and Tenant Act 1985, mandating requirements in relation to how a landlord should hold the building safety charges in a trust fund.

589. Subsection (9) of section 17U gives powers to the Secretary of State to determine the use of any sums which may remain on credit in the trust fund.

590. Subsection (10) of section 17U provides that the regulations can set out provisions to deal with different cases and may contain supplementary, incidental, consequential etc provisions as necessary.

Justification for delegation

591. It is necessary to take a power to detail such requirements of administration of the trust fund to ensure that the landlord manages the monies in an appropriate and transparent way for the benefit of the tenants.

592. It allows for the Secretary of State to consult on such requirements and provides flexibility for requirements to tailored to different circumstances.

Justification for procedure selected

593. The negative procedure in both Houses of Parliament is considered appropriate for these operational matters. The draft provision is based on provisions in section 42 of the Landlord and Tenant Act 1987 (not yet brought fully into force) which are designed to increase the protections afforded to tenant monies held by landlords and which similarly provide for detailed regulations to be made using the negative procedure.

**Clause 89: Building safety charges – new section 17V(2), (3), (13), (14), (15) and (17) of the Landlord and Tenant Act 1985: “Building safety charge contributions to be held in designated account”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

Purpose and context

594. Clause 89 inserts new section 17V into the Landlord and Tenant Act 1985, specifying that amounts held on trust must be done so in a designated account with a relevant financial institution.

595. Subsection (2) of section 17V gives powers to the Secretary of State to specify the description of a designated account.

596. Subsection (3) of section 17V provides that the regulations can set out specified conditions that allow for the movement of trust funds between designated accounts.

597. Subsection (13) of section 17V enables regulations to be made to cover the circumstances which constitute reasonable grounds for when a tenant can withhold payment of the building safety charge. This includes the length of time and the amount of payment that can be withheld.

598. Subsection (14) of section 17V enables the Secretary of State to make regulations specifying circumstances in which a landlord will be exempt from the requirements of this section and of the regulations made thereunder.

599. Subsection (15) of section 17V enables the Secretary of State to make different provision for different circumstances and make consequential, supplementary, incidental etc provisions.

600. Subsection (17) of section 17V provides that the regulations can set out the definition of a relevant financial institution for the purpose of this section.

Justification for delegation

601. It is necessary to take a power to detail such requirements of administration of the trust fund to ensure that the landlord deposits the money in an appropriate trust fund with an appropriate institution so that there are regulatory protections of tenants monies (such as those provided by the Financial Conduct Authority).

602. It allows for the Secretary of State to consult on such requirements and provides flexibility which cannot be provided for in primary legislation.

Justification for procedure selected

603. The negative procedure in both Houses of Parliament is considered appropriate for such operational matters. The clause is based on provisions in section 42A of the Landlord and Tenant Act 1987 (not yet brought fully into force) which are designed to increase the protections afforded to tenant monies held by landlords and which similarly provide for detailed regulations to be made using the negative procedure.

**Clause 91(1) and (8): Compliance notices**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

*Power conferred on: Building Safety Regulator*

*Power exercised by: Notice*

*Parliamentary procedure: No procedure*

Purpose and context

604. Clause 91 provides an enforcement tool for the Building Safety Regulator to use in enforcing compliance with the requirements for higher-risk buildings in occupation. A compliance notice under this clause will be able to require a “relevant person” (defined in subsection (8) as the Accountable Person or Building Safety Manager) to rectify non-compliance with the requirements set out in Part 4 of the Bill at their own expense. These notices are case specific sanctions, exercised on the basis of evidence available to the Building Safety Regulator, so cannot be provided for through legislation (whether primary or secondary).

605. Where it appears to the Building Safety Regulator that the contravention has or will place people in or about the building in imminent danger, the Building Safety Regulator may issue a specific type of compliance notice, known as an urgent action notice (subsection (4)). The main impact of using an urgent action notice rather than a normal compliance notice is that:

- a. The Building Safety Regulator is likely to set a shorter period for carrying out the work; and
- b. If the notice is appealed to the First-tier Tribunal (see clause 93), the effect of an urgent action notice is not suspended by that appeal (clause 93(3)).

606. Failure to comply with either type of notice could result in prosecution, with a maximum penalty of an unlimited fine or two years' imprisonment (subsection (5)). Subsection (8) enables the Secretary of State to make regulations excluding certain requirements under Part 4 of this Bill, or regulations made under it, from enforcement action by way of compliance notices.

#### Justification for delegation

607. In relation to the power, by regulations, to exclude certain requirements from enforcement action by way of compliance notices, the existing offence of breaching building regulations in section 35 of the Building Act 1984 includes a power to exclude certain provisions of those regulations from criminal liability, which has been used to make regulation 47 of the Building Regulations 2010. We are making similar provision in respect of compliance notices in the build stage (clause 42) to ensure that there is consistency between the different enforcement provisions; it is therefore appropriate to make similar provision in order to be able to exclude from the ambit of compliance notices non-compliance with minor and technical requirements under Part 4 of the Bill. In relation to the power for the Building Safety Regulator to impose compliance notices, these are case specific sanctions, exercised on the basis of evidence available to the Building Safety Regulator, so cannot be provided for through legislation (whether primary or secondary).

#### Justification for procedure selected

608. In relation to the power of the Building Safety Regulator to impose compliance notices, these will be used by the Building Safety Regulator on a case by case basis. It would not be appropriate for these to be subject to Parliamentary scrutiny before they are issued. In relation to the power to make Regulations made under subsection (8) of this clause, this will be subject to the negative procedure. Building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and the Government believes that it is appropriate to utilise this procedure for regulations made under clause 91, in order to maintain consistency. Furthermore, the contents of these regulations are likely to be uncontroversial, as they will merely exclude certain minor requirements from the ambit of compliance notices, so again, we consider the negative procedure to be appropriate.

#### **Clause 92(1), (2) and (4): Compliance notices: supplementary**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

609. This clause provides a power to make provisions about compliance notices, which may be issued in respect of breaches of the requirements of Part 4 of the Bill. In particular, the Secretary of State may make provisions as to the form, content, giving of such notices, the extension of time for complying with such notices and as to their amendment and withdrawal.

610. It also sets out, at subsection (4), persons that the regulator must notify when a compliance notice is issued, including the local authority for the area in which the building is situated. This subsection includes a power for the Secretary of State to set out in regulations further persons who must be notified.

### Justification for delegation

611. The regulations that would be made under this clause are likely to be detailed and procedural in nature and, in line with similar material in other regimes, we consider it appropriate to set out that detail in secondary legislation. The content of the regulations is likely to be uncontroversial but may need to be amended in the light of experience in operating the new regime, and therefore require flexibility that is not appropriate for primary legislation. As such, we consider it sensible to set this material out in secondary rather than primary legislation.

### Justification for procedure selected

612. Regulations to prescribe under this clause are largely procedural and will be subject to the negative procedure in both Houses of Parliament. The Government considers this to be appropriate for regulations made under this provision, given the procedural nature of the matters to be specified, and their uncontroversial nature.

## **Clause 93(5): Appeals against compliance notice**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

613. This clause enables persons given compliance notices to appeal against the compliance notices.

614. The clause contains a regulation-making power for the Secretary of State to make regulations about appeals, including prescribing the grounds of appeal and the power of the First-tier Tribunal on determining an appeal, including the power to give directions.

615. The clause also empowers the First-tier Tribunal to give a direction to specify that a compliance notice that is an urgent action notice is of no effect, pending the final determination of the appeal. This power, and any other direction-making power that may be given to the First-tier Tribunal through the regulations made under the

power mentioned above, is judicial rather than legislative in character, so is only mentioned here for information.

Justification for delegation

616. The grounds of appeal and powers of the First-tier Tribunal in such appeals under this clause will be set out in secondary legislation. Flexibility is required in setting the grounds because the decision to issue a compliance notice is dependent on the nature of and degree to which the relevant requirement will have been breached. Given the likely technical detail of such regulations, which will be grounded in the requirements set out in Part 4 of the Bill, and regulations made under it, it is considered appropriate to set the requirements in secondary legislation.

Justification for procedure selected

617. The regulations that will be made under this section will be procedural and are not expected to be controversial. The Government considers that the negative procedure in both Houses of Parliament provides the appropriate degree of Parliamentary scrutiny.

**Clause 94(4): Offence: contravention giving rise to risk of death and serious injury**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

Purpose and context

618. Clause 94 provides an enforcement tool for the Building Safety Regulator to use in enforcing compliance with the requirements for higher-risk buildings in occupation, known as a 'compliance notice', including an 'urgent action notice' where the issue has or will place people in or about the building in imminent danger.

619. This clause sets out an alternative to a compliance notice or an urgent action notice where the Building Safety Regulator considers it appropriate, namely to prosecute the Accountable Person for contravening, without reasonable excuse, a requirement to such a degree that anyone in or about the building is placed at critical risk (defined in subsection (4) as "a significant risk of death or serious injury arising from a building safety risk").

620. This offence, like that of breaching a compliance notice in the previous clause, carries a maximum penalty of an unlimited fine or two years' imprisonment (subsection (2)). Subsection (4) enables the Secretary of State to make regulations excluding certain requirements under Part 4 of the Bill, or regulations made under it, from enforcement action by way of prosecution for an offence under this clause.

### Justification for delegation

621. The existing offence of breaching building regulations in section 35 of the Building Act 1984 includes a power to exclude certain provisions of those regulations from criminal liability, which has been used to make regulation 47 of the Building Regulations 2010. We are making similar provision in respect of compliance notices in both build and occupation (clauses 42 and 91) to ensure that there is consistency between the different enforcement provisions; it is therefore appropriate to make similar provision in order to be able to exclude from this offence non-compliance with minor and technical requirements under Part 4 of the Bill.

### Justification for procedure selected

622. Regulations made under this clause will be subject to the negative procedure in both Houses of Parliament. Equivalent building regulations are currently subject to the negative resolution procedure (see section 1(4) of the Building Act 1984) and the Government believes that it is appropriate to maintain this procedure for regulations made under clause 94, in order to maintain consistency.

### **Clause 95(4): Notification by regulator before making application under section 96**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

623. The Independent Review recommended the need for a regulator for the whole of an occupied building in relation to building safety risks, who can hold dutyholders to account and utilise robust sanctions where necessary. The Government deemed it necessary to go beyond this recommendation, and have introduced a Special Measures Manager, to take on the management of risks in building as a last resort, where the Building Safety Regulator deems that the building safety places residents' lives at risk.

624. To enable this, the clause provides that the Building Safety Regulator must give notice to the Accountable Person of its intention to apply to the First-tier Tribunal to appoint a Special Measures Manager.

625. Subsection (4) grants a delegated power to the Secretary of State to, by regulations, make provision for notices made under this clause. This includes the form and content, the way in which the notice must be given and the way in which the Accountable Person can respond and challenge the notice and the way in which the Building Safety Regulator must have regard to such representations.

### Justification for delegation

626. The details of what must be included in a notice served under this clause will be specified in secondary legislation using the power delegated to the Secretary of



State under this clause. This power is considered necessary because the form and content of the notice and the way in which the notice and the way in which challenges by the Accountable Person must be made and considered will be subject to changes over time. How the Building Safety Regulator operates its communication with Accountable Persons, will be impacted not least by developments in digital technologies.

#### Justification for procedure selected

627. Regulations made under subsection (4) will be subject to the negative procedure in both Houses of Parliament. Regulations made using this procedure would relate to procedural and administrative detail. The choice of negative procedure is considered to provide for the appropriate level of scrutiny and opportunity for debate, if desired, without requiring a debate on procedural and administrative details as a matter of course.

#### **Clause 96(7): Order appointing special measures manager**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Affirmative procedure*

#### Purpose and context

628. The Independent Review recommended the need for a regulator for the whole of an occupied building in relation to building safety risks, who can hold dutyholders to account and utilise robust sanctions where necessary. The Government deemed it necessary to go beyond this recommendation, and have introduced a Special Measures Manager, to take on the management of risks in buildings as a last resort.

629. Clause 96 enables the First-tier Tribunal to make an order to appoint a Special Measures Manager to carry out functions relating to the management of the building safety risks and functions as a receiver. The functions to be given to a particular Special Measures Manager will be set out in the order appointing him/her.

630. The clause sets the grounds on which a Special Measures Manager can be appointed, where there have been serious or repeated failures by an Accountable Person to comply with their duties under Part 4 of the Bill or failure to administer building safety charges in accordance with requirements.

631. Subsection (7) gives the Secretary of State the power to amend, by way of regulations, the subsection setting out the circumstances in which the First-tier Tribunal can make such an order.

#### Justification for delegation

632. Over time, there may be changes to the wider building safety regime. Such changes could result in a need for the First-tier Tribunal to consider different or additional factors when determining whether a building requires the intervention of Special Measures Manager.

633. To account for the adaptability required, the delegated power laid out in subsection (7) of this clause will give the Secretary of State the power to amend the circumstances in which the First-tier Tribunal can make an order under this clause.

*Justification for procedure selected*

634. The exercise of this power will be subject to the affirmative procedure in both Houses of Parliament. A higher level of Parliament scrutiny is appropriate because these regulations would make changes to the primary legislation about the grounds to make an order appointing a Special Measures Manager.

**Clause 97(7): Orders under section 96: supplementary**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

*Purpose and context*

635. The Independent Review recommended the need for a regulator for the whole of an occupied building in relation to building safety risks, who can hold dutyholders to account and utilise robust sanctions where necessary. The Government deemed it necessary to go beyond this recommendation, and have introduced a Special Measures Manager, to take on the management of risks in building as a last resort.

636. Clause 97 provides for supplementary provisions for the matters as set out in clause 96, when an order is made appointing a Special Measures Manager.

637. The clauses extends powers of the First-tier Tribunal to make directions to the Special Measures Manager or other persons in respect of any matters in relation to the functions carried out by that manager, or any other incidental or ancillary matter.

638. Subsection (7) gives the Secretary of State the power to make provision, by way of regulations, as to how monies received by the Special Measures Manager should be dealt with and accounted for.

*Justification for delegation*

639. The First-tier Tribunal already possesses broad powers of direction that will ensure that the Special Measures Manager or others exercise functions in accordance with the order that has been made for special measures.

640. However, a delegated power is required here to ensure that the Secretary of State can make provisions regarding the funding received through the building safety charge, how it should be used by the Special Measures Manager, in accordance with orders made by the First-tier Tribunal.

### Justification for procedure selected

641. The provisions that would be changed are procedural and operational. We consider the negative procedure in both Houses of Parliament provides the appropriate level of scrutiny and opportunity for debate, if desired, without requiring a debate on procedural and operational details as a matter of course.

### **Clause 99(1) and (2): Notifications about orders under section 96**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

642. The Independent Review recommended the need for a regulator for the whole of an occupied building in relation to building safety risks, who can hold dutyholders to account and utilise robust sanctions where necessary. The Government deemed it necessary to go beyond this recommendation, and have introduced a Special Measures Manager, to take on the management of risks in building as a last resort.

643. When an order under clause 96 is made (to appoint a Special Measures Manager) the Building Safety Regulator is required to notify prescribed persons when an order has been made or where there is variation or revocation of that order. Regulations will set out who those prescribed persons are, and the period of time within which they must be notified by the regulator.

644. Subsection (2) of clause 99 gives the Secretary of State the power through regulations to set out the form and content of the notice, any information that must accompany the notice(s), as well as the delivery of such notice.

### Justification for delegation

645. The details of what must be included in the notice to which prescribed persons and within which period of time will be set out in secondary legislation using the delegated powers in this clause.

646. The powers are required because some adaptability is required if the Secretary of State considers that changes need to be made to what is included in the notice. For example, the different information may be required for different prescribed persons over time and this power gives sufficient flexibility to account for these changes. The timing of when such notices should be provided will be informed by the operational capacity and experience of the regulator.

### Justification for procedure selected

647. Regulations made under subsection (2) will be subject to the negative procedure in both Houses of Parliament. Regulations made using this procedure would relate to procedural and administrative detail. The choice of negative procedure is considered to provide for appropriate scrutiny and opportunity for debate, if desired,

without requiring a debate on procedural and administrative details as a matter of course.

### **Clause 100(2): Variation or revocation of orders under section 96**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

#### *Purpose and context*

648. The Independent Review recommended the need for a regulator for the whole of an occupied building in relation to building safety risks, who can hold dutyholders to account and utilise robust sanctions where necessary. The Government deemed it necessary to go beyond this recommendation, and have introduced a Special Measures Manager, to take on the management of risks in building as a last resort.

649. Clause 96 makes provision to allow the Building Safety Regulator to apply to the First-tier Tribunal for an order appointing a Special Measures Manager in an occupied building if there are sufficient grounds.

650. Clause 100 makes provision for the First-tier Tribunal to vary or revoke an order made under clause 96. Subsection (2) gives a power to the Secretary of State to, by regulations, make provision about the grounds on which the First-tier Tribunal may vary or revoke an order.

#### *Justification for delegation*

651. The grounds for varying or revoking an order made under clause 96 will be included in secondary legislation. Flexibility is required in determining what these grounds are because the determination regarding whether to vary or revoke an order is dependent on the grounds that were used to make the order originally under clause 96, which are subject to a delegated power allowing for amendment (clause 96, subsection (7)). In order to ensure that the grounds made in this clause are consistent with clause 96, a delegated power is also necessary for clause 100.

#### *Justification for procedure selected*

652. The provisions that would be changed are procedural and operational. We consider the negative procedure in both Houses of Parliament provides the appropriate level of scrutiny and opportunity for debate, if desired, without requiring a debate on procedural and operational details as a matter of course.

### **Clause 101(1): Guidance**

*Power conferred on: The Building Safety Regulator (with consent of the Secretary of State)*

*Power exercised by: Statutory guidance*

*Parliamentary procedure: None*

### Purpose and context

653. This clause sets out the areas of the building safety regime where the Building Safety Regulator may issue, revise and withdraw guidance with statutory force, including the process to be followed and the potential consequences of complying with – or not – the content of that guidance.

654. Subsection (1) sets out the areas where the Building Safety Regulator may issue guidance; they are:

- a. How to assess the competence of a prospective Building Safety Manager;
- b. Mandatory reporting requirements for Accountable Persons;
- c. How to discharge the duty to keep or give information to residents; and
- d. How an Accountable Person should operate a complaints procedure for residents.

655. Subsection (6) makes clear that the references to specific provisions of the Bill includes regulations made under those provisions.

656. Subsections (1), (2) and (5) set out that the Building Safety Regulator may issue, withdraw or amend guidance, but only with the consent of the Secretary of State. Subsection (3) makes clear that, as with the approved documents issued in accordance with Part 1 of the Building Act 1984, compliance with the guidance can be relied on in court or First-tier Tribunal proceedings as tending to establish compliance with the relevant statutory obligation, while not following the guidance will tend to establish non-compliance with the relevant statutory obligation.

657. Subsection (4) makes clear that any document that appears to be such guidance will be taken to be such unless the contrary is proved.

### Justification for delegation

658. The guidance intended to be issued under this power will be detailed and technical in nature and will not include legislative obligations, and as such, is unsuitable to be set out in primary or indeed secondary legislation. In addition, the content of such guidance is likely to change over time in the light of both the experience of the Building Safety Regulator and the regulated sector of the operation of the regime, as well as reflecting technical and technological developments.

### Justification for procedure selected

659. The guidance intended to be issued under this power will generally be operational in nature and will be informative rather than imposing strict legal requirements (although see above for description of the legal force of this guidance), and as such, is appropriate to be guidance rather than primary or secondary legislation. In addition, the content of such guidance is likely to change over time as the regime matures, as well as reflecting technical and technological developments. The Secretary of State will be required to consent to the issuing, revising or withdrawal

of any guidance under this power. For these reasons, the Government considers that Parliamentary oversight of this guidance is not required.

### **Clause 103(1), (2), (3), (4): Appeals against decisions of the regulator**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

#### *Purpose and context*

660. This clause provides a power to create rights of appeal for prescribed persons against decisions of the regulator made under Part 4 of the Bill or regulations under that Part.

661. It also creates a power to specify grounds of appeal, to make provision about the effect of bringing an appeal on the decision appealed (for example, we may want to provide that the bringing of an appeal suspends the effect of a decision of the regulator, or that it does not, as with compliance notices under clause 93), and to make provision about the powers of the First-tier Tribunal on determining an appeal, including a power to give directions.

662. The latter power to give directions is judicial rather than legislative in character and therefore mentioned only for information.

#### *Justification for delegation*

663. Regulations will set out the category of decisions that will be appealable. Regulations will also make provisions about the grounds of appeal, the persons able to bring appeals, and the effect of making an appeal. These provisions are subject to change over time and require flexibility that is not appropriate for primary legislation.

#### *Justification for procedure selected*

664. Regulations to prescribe under this clause are largely procedural and will be subject to the negative procedure in both Houses of Parliament. The Government considers this to be appropriate for regulations made under this provision, given the technical nature of the process to be specified, and their uncontroversial nature.

### **Clause 106(1) and (5): The new homes ombudsman scheme**

*Power conferred on: Secretary of State*

*Power exercised by: Competitive selection or direct appointment*

*Parliamentary procedure: None*

#### *Purpose and context*

665. This clause gives the Secretary of State the power to make the necessary arrangements for a statutory new homes ombudsman scheme to be put in place.

Subsection (5) is written so as to be flexible, so that the Secretary of State could appoint an industry-wide scheme which had been operating voluntarily, or, could make arrangements with an entity to set up a new scheme, or could establish and maintain the scheme “in-house” (within Government).

666. The housebuilding industry is open to the idea of having an industry-wide scheme and the industry may itself implement a shadow scheme which would investigate and determine complaints on a voluntary basis, with the agreement of consumers and developers, before the legislation is in place.

667. If the industry does not establish a scheme itself which could be a suitable vehicle, prior to the legislation coming into effect, then the intent is for the Secretary of State to run a competitive selection process to appoint an entity to establish and maintain the scheme. This would be in preference to establishing the scheme and running it within the department. However, the option is retained to ensure that a scheme can be put in place.

668. Whoever is established to act as the new homes ombudsman scheme must meet the mandatory requirements set out in subsection (2) of the clause and Schedule 7 to the Bill.

#### Justification for delegation

669. This power is delegated to the Secretary of State so that a statutory new homes ombudsman scheme can be appointed or selected as required.

670. The scheme must meet the requirements which are in subsection (2) and Schedule 7.

671. It is considered appropriate to have the broad flexibility to either appoint an existing voluntary scheme, competitively select an entity to set up and run the scheme or set up a scheme to run it “in-house”. This will allow the Secretary of State to select the best implementation method to deliver the policy.

#### Justification for procedure

672. The selection and appointment of the new homes ombudsman scheme will cover detailed and technical issues including the requirements set out in Schedule 7 to the Bill which the scheme must meet, as part of the conditions of appointment in subsection (2) of the clause. It will not include legislative obligations other than to meet the requirements in subsection (2) and Schedule 7. We consider it is appropriate that the arrangements for selecting and appointing the scheme is not subject to Parliamentary procedure.

### **Clause 107(1) and (2): Meaning of developer**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Affirmative procedure*

Purpose and context

673. New build homebuyers currently have no statutory right to access a redress scheme for complaints about developers. The new homes ombudsman plugs this significant gap for consumers.

674. The purpose of the power is to enable the Secretary of State to add to the definition of who is a developer for the purposes of the new homes ombudsman scheme.

Justification for delegation

675. The definition of developer in the Bill is wide, and it is envisaged that it will capture those persons who Government intends to become members of the redress scheme. However, it is acknowledged that developers use a variety of corporate structures and vehicles, and this will be kept under review.

676. There may be circumstances in which, once the scheme has been operating for a period, and the Government has experience of the impact of the legislation, it becomes apparent that a connected person should properly be viewed as a developer. The Government has therefore taken this power to enable it to adjust the legislation to capture other persons who should be in scope and who should provide redress to consumers.

Justification for procedure selected

677. Regulations made under this power will be subject to affirmative resolution in both Houses of Parliament. If exercised, this power would impact on the legislative regime by adding to the categories of persons who may be developers and therefore required to members of the scheme.

678. Consequently, it is considered that the use of the power should be subject to debate and approval in both Houses of Parliament.

**Clause 108(1) to (7): Power to require persons to join scheme**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Affirmative procedure*

Purpose and context

679. New build homebuyers currently have no statutory right to access a redress scheme for complaints about developers. The new homes ombudsman plugs this significant gap for consumers.

680. Under clause 108 the Secretary of State may by regulations require developers to become and remain members of the new homes ombudsman scheme for such period as specified (including in circumstances where they are no longer acting as developers); make provision for sanctions to be imposed for failure to comply with



the requirements (which must include rights to appeal and such other provisions as appropriate to safeguard the interests of persons on whom a sanction may be imposed); provide for a criminal offence for breach of a prohibition order (one of the sanctions) with a maximum penalty to be stated on the face of the bill, and appoint an enforcement body to investigate suspected breaches.

681. In so doing the Secretary of State may also make provision requiring developers to publicise their membership.

Justification for delegation

682. The purpose of the power is to enable the Secretary of State to require developers to join the scheme and remain a member for so long as is necessary once the scheme has been appointed, in accordance with clause 106. To require developers to become members without such a scheme being in place would be unworkable.

683. The detail of how the requirement upon developers above will be enforced is left to be set out in secondary legislation once a scheme has been appointed and once the Government has appointed a suitable enforcement body.

684. During the pre-legislative scrutiny process, we will liaise with Ministry of Justice and the devolved administrations to settle the detail of the sanctions to be imposed by Regulations, including the level of any fines, and to settle the details in relation to the criminal offence being created. It is not felt appropriate to include a figure at subsection (5) without such input.

Justification for procedure selected

685. Regulations made under this power will be subject to affirmative resolution in both Houses of Parliament. If exercised, this power would impact on the legislative regime by requiring developers to join a scheme and setting out the consequences for failure to do so. Consequently, it is considered that the use of the power should be subject to debate and approval in both Houses of Parliament.

**Clause 109(1) and (2): Developer's Code of Practice**

*Power conferred on: Secretary of State*

*Power exercised by: Code of Practice*

*Parliamentary procedure: None*

Purpose and context

686. The housebuilding industry is open to the idea of having an industry-wide code of practice which will set standards as to the quality of finish of new build homes, and the quality of service which should be given to customers. The Government has seen a draft code which has been produced voluntarily.

687. This clause gives the Secretary of State the power to approve any such code and is written so as to be flexible and allow changes to the code. If the industry does

not bring forwards its own code, then the Secretary of State may issue a code itself, and again the clause includes flexibility to revise it or replace it.

688. Where there is a code approved or issued, it must be published, and the new homes ombudsman scheme must take it into account in investigating any complaints.

#### Justification for delegation

689. This power is delegated to the Secretary of State so that a code of practice can be approved or issued if required. Standards of conduct and workmanship/quality can change quickly, and the code of practice should reflect these changes as quickly and efficiently as possible.

690. The Government has not, however, mandated the production of a Code of Practice in the Bill as whilst one would be desirable, it is not considered integral to the role of the new homes ombudsman. It is considered to be a good thing to have to ensure consistency across developers, but the scheme would still be able to investigate complaints without one.

#### Justification for procedure

691. As the code, if published, will cover detailed and technical issues such as workmanship and quality and will not include legislative obligations, we consider it is appropriate that the making of the code is not subject to Parliamentary procedure.

### **Clause 110: Construction products - Schedule 8: Construction products regulations**

Paragraphs 1 to 13 – Power to make regulations

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure and affirmative procedures*

#### Purpose and context

692. Paragraph 1 of Schedule 8 to the Bill creates a power for the Secretary of State to make regulations in relation to the marketing and supply of construction products placed on the United Kingdom market.

693. Paragraphs 2 to 13 of Schedule 8 set out detail the regulations that will apply to products subject to designated standards. This includes the designation of such standards, how such standards may be made and the matters to be included in such standards. Detail is provided on whom such regulations will be imposed, the requirements they may make and the market surveillance and enforcement powers, and penalties that may be applied (both civil and criminal).

694. Paragraph 5 provides the Secretary of State with powers such that they can delegate powers to relevant authorities (as defined) to impose requirements on

manufacturers, importers and distributors of construction products by notice. This will apply where construction products comply with the regulations as designated products, but nevertheless risk causing death or serious injury to any person. This reflects an existing power contained in the retained EU law<sup>4</sup> as it applies to designated products.

695. Paragraph 6 provides the Secretary of State with powers to include equivalent provision to that contained in the EU Construction Products Regulation 2011 (No 305/2011) or in respect of which provision is made in those regulations.

696. Paragraphs 7 to 10 provide the Secretary of State with similar powers to regulate products defined as safety critical.

697. Paragraph 11 and 12 provide the Secretary of State with powers to ensure that products not otherwise regulated within this schedule are safe. Paragraph 12 sets out the definition of safe and paragraph 11 details the requirements the Secretary of State can impose on the manufacturers, importers and distributors of construction products which are not safe. This includes similar requirements as can be imposed in relation to designated and safety critical products.

698. Paragraph 13 addresses enforcement and provides a power for the Secretary of State to make provision for market surveillance, securing compliance and the imposition of penalties for noncompliance, or obstruction of those carrying out functions under the regulations. There is also power to confer the necessary powers on relevant authorities (as defined) to allow them to carry out effective market surveillance, ensure compliance and take appropriate action, to impose requirements by notice, including the withdrawal of a product from the market or recall from persons, to make provision for forfeiture of products, for provision for criminal and civil offences and to identify the public authorities who are able to prosecute, or impose civil penalties (including fines) and the provision for penalties for criminal offences.

#### Justification for delegation

699. The requirements are detailed and technical, such that they are more appropriate for inclusion in secondary legislation.

700. Because they are also technical, they are more likely to be subject to frequent change to reflect technical developments, and it would be more efficient to deal with this in secondary legislation than in primary.

701. The general safety requirement for other products is currently in secondary legislation<sup>5</sup> and if this is appropriate for the general safety requirement for consumer products, it would be inconsistent for a parallel requirement for a fairly narrow class of goods to be in primary legislation.

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<sup>4</sup> EU Regulation no 305/2011 as amended by the Construction Product (amendment etc) (EU Exit) Regulations 2019 (2019 No. 465).

<sup>5</sup> General Product Safety Regulations 2005 (2005 No. 1803).

702. The overall structure of the legislation relating to safety of construction products is contained in secondary legislation; it would be consistent for these additional safety requirements to be contained in secondary legislation. In particular as there is a close relationship between the regime for safety-critical products and the regime for designated-standard products.

703. The existing enforcement regime is contained in secondary legislation and it would be consistent to have the equivalent enforcement powers for safety-critical powers in secondary legislation and would mean the two closely linked regimes can be amended simultaneously rather than requiring primary legislation for one.

704. We anticipate needing to amend our regulations in response to trade agreements reached with third party countries; as there will be a significant number of these agreements reached over time, we will not want to deal with this in primary legislation each time and can be fleet of foot with these wide powers.

705. By the same token, as the UK will be an individual country on the international stage, we anticipate we may wish to adapt our construction safety protocols to accord with changes in approach adopted by our international colleagues. Again, we will want to be able to manage this swiftly and without having to resort to primary legislation each time.

#### *Justification for procedure selected*

706. Regulations made under paragraph 8(1) of Schedule 8 to the Bill (for the first time only), paragraph 13(5)(a) (the creation of criminal offences) and any provision which repeals, or amends retained EU law, or any Act will be subject to the affirmative resolution procedure in both Houses of Parliament. The decision as to how this scheme will operate will be of critical importance to the effective regulation of constructions products placed on the UK market. It is important, therefore, that when the scheme is designed initially that this should be subject to full debate to ensure that it is fit for purpose. It is envisaged that further use of this power is likely to be limited to addressing technical and administrative matters. We consider this is the appropriate level of scrutiny for the creation of criminal offences and for any repealing or amending of retained EU law or any Act.

707. The remainder of the regulations and subsequent regulations made under paragraph 8(1) will be subject to the negative procedure in both Houses of Parliament. Taking into account the changing nature of construction products over time, it will be important for the Secretary of State to be able to respond to such changes in a timely and efficient manner. It is therefore considered appropriate the exercise of these powers is made subject to the negative procedure

Paragraph 14 – Information-sharing

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

708. Paragraph 14 of Schedule 8 gives the Secretary of State the power to make regulations allowing the sharing of information between those regulating and enforcing the regulation of construction products. The Secretary of State is also given a power to provide for information sharing between authorities who may come into possession of information in relation to the safety of construction products and the regulatory authorities. Such information sharing will be necessary for the effective and efficient regulation of construction products on the UK market.

### Justification for delegation

709. It is appropriate that these powers are delegated as they are necessary to support the whole construction products framework. This framework will all be made through delegated powers (with the justification set out above) and any changes made to those powers may well require amendment to these provisions. It would be cumbersome and inefficient for the information sharing provisions only to be subject to primary legislation.

### Justification for procedure selected

710. Regulations made under paragraph 14 will be subject to the negative procedure in both Houses of Parliament. The detail of these regulations will be worked out with the relevant authorities before being made and will, accordingly, not be controversial and we do not consider it is appropriate for them to be required to be subject to debate.

Paragraph 15(1) – power to make transitional, transitory, consequential and supplementary provisions

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

### Purpose and context

711. Paragraph 15(1)(c) of Schedule 8 provides a power to make transitional, consequential and supplementary provision or savings.

### Justification for delegation

712. When making construction products regulations it is likely to be necessary to provide transitional provisions and/or saving provisions in relation to transition to a new regime from existing provisions. Such provisions are standard when providing for this type of regime.

### Justification for procedure selected

713. Regulations made under paragraph 15(1)(c) will be subject to the negative resolution procedure in both Houses of Parliament. This is considered appropriate

because provision made in regulations under paragraph 15(1)(c) will be technical in nature and not likely to be controversial or require a more detailed level of Parliamentary scrutiny.

Paragraph 16 – power to repeal, amend or re-enact retained EU law and any other enactment (including this schedule)

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Affirmative procedure*

*Purpose and context*

714. Paragraph 16 of Schedule 8 provides a power for the Secretary of State to repeal, amend or re-enact retained EU law (and in particular the 2011 Regulation<sup>6</sup>, and EU derived domestic legislation, in particular the Construction Products regulations 2013 (SI 2013/1387) and consequential provisions (including amending this Schedule).

715. The purpose of this power is (a) to ensure that in making and amending the relevant regulations, the Secretary of State has the necessary powers to amend existing regulations for construction products deriving from EU law and the supporting enforcement regime which was made under powers conferred by section 2(2) of the European Communities Act 1972 (the Construction Products Regulations 2013). and (b) to make amendments to the existing EU derived legislation to reflect changing UK policy, for example to reflect policy changes regarding the continuity principle. Currently the Secretary of State has very limited powers in relation to this existing legislation.

716. This will also ensure that the regulatory regime for construction products can be revised in the future, to make sure it is fit for purpose as the construction products industry develops over time.

*Justification for delegation*

717. Currently the regulation of construction products is governed by the EU regime, by virtue of the 2011 and 2013 regulations. The Secretary of State has very limited powers to amend the 2011 regulations and in order over time to develop a UK only regime, the Secretary of State will need wide ranging powers in relation to these regulations. The 2013 regulations were made under section 2(2) of the European Communities Act 1972 and without a power given in primary legislation, the Secretary of State will be unable to amend these regulations in the future. It is envisaged that these regulations will be amended to reflect a developing UK only regime.

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<sup>6</sup> Ibid.

### Justification for procedure selected

718. Regulations made under this paragraph 16(1)(a) and (b) will be subject to the affirmative resolution in both Houses of Parliament. As the exercise of this power will impact on retained EU law and regulations derived from EU law, it is considered that the use of such power should be subject to debate each time it is used.

719. Regulations made under paragraph 16(1)(c) will also be subject to the affirmative resolution in both Houses of Parliament. As the exercise of this power could have wide ranging effect, it is considered that the use of such power should be subject to debate each time it is used.

### **Clause 111(3): Architects: discipline and continuing professional development**

*Power conferred on: the Architects Registration Board*

*Power exercised by: guidance*

*Parliamentary procedure: None*

### Purpose and context

720. Clause 111(3) amends the existing power of the Architects Registration Board, the statutory regulator of architects in the UK, at section 9 of the Architects Act 1997 to prescribe the required knowledge and skills for an individual for entry onto the UK Register of Architects. The amendment to section 9(1) of the Architects Act 1997 enables the Architects Registration Board to prescribe “further experience and training”, as well as the qualifications and practical experience required for initial registration. This would require all persons on the UK Register of Architects seeking entry or annual re-entry on the UK Register of Architects, to supply the Architects Registration Board with evidence that they have completed the prescribed training or practical experience on an ongoing basis.

### Justification for delegation

721. The Architects Registration Board publishes non-legislative General Criteria to prescribe the qualifications and practical experience required for entry on the UK Register of Architects under section 9 of the Architects Act 1997. The General Criteria set out in detail the subject material that must be covered by students gaining qualifications, and the additional knowledge and skills that an individual is expected to have in order to register and practise in the UK.

722. The Architects Registration Board will determine which further experience or training should be assessed and how the assessment should take place within a regime for the ongoing monitoring of professional competence. New section 9(1A) of the Architects Act 1997 requires the Architects Registration Board to consult professional bodies and other stakeholders before introducing a competence regime. The Government does not consider it is appropriate to put the further experience or training on the face of the Bill or in secondary legislation given that prescribing such criteria is primarily administrative as part of a person entering or remaining on the UK Register of Architects. It would not be practicable for the further experience or training to be prescribed via legislation. The Architects Registration

Board needs the power to determine and assess what further experience or training are appropriate for a person to be entered or remain on the Register.

Justification for procedure selected

723. The power to prescribe further experience or training is exercised by the Architects Registration Board publishing General Criteria, as is currently the method for prescribing qualifications and practical experience. As the prescription of further experience or training involves detailed administrative assessment and determination, we consider it is inappropriate for such prescription to be subject to scrutiny in Parliament.

**Clause 112: Power of Architects Registration Board to charge fees – new section 24A of the Architects Act 1997: “Fees”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

Purpose and context

724. This clause inserts new section 24A into the Architects Act 1997 (“the 1997 Act”) to provide a delegated power for the Secretary of State to make provision for the services for which the Architects Registration Board may charge a fee.

725. The 1997 Act prescribes the services for which the Architects Registration Board may charge. The costs of all of the Architects Registration Board’s functions are currently met by the annual fee for retention on the Register of Architects under section 8 of the 1997 Act, which is charged by the Board to all architects.

726. After the end of the EU Exit Transition Period, the Government expects an expansion in the services the Architects Registration Board provides to implement Mutual Recognition Agreements or Memoranda of Understanding relating to the regulation of architects, which the Government expects to substantially expand the Board’s existing role in considering and recognising international qualifications, and the Architects Registration Board’s function in providing evidence for UK architects registering abroad. This will provide an expedited route for international architects who meet UK standards of architectural qualification to join the UK Register.

727. Once on the Register, these architects will be expected to meet the ongoing competence requirements which will be introduced by the Architects Registration Board for all UK registered architects. As not all registered architects will benefit from these additional services, the Government considers that it is appropriate to have separate fees for these additional services, in order to keep the retention fee down for the architects that do not utilise additional services.

Justification for delegation

728. These powers are necessary in order to allow for the anticipated expansion of the services for which the Architects Registration Board may charge. Given that the



nature of the Architects Registration Board's services will be contingent on the content of future agreements, the Government is of the view that prescribing the fees which are required for these services require flexibility that is not appropriate for primary legislation.

729. Regulations will set out the services, or types of services, in respect of which the Architects Registration Board may charge a fee. Regulations will also make provisions about the persons who are liable to pay a fee, and how fees charged by the Board are to be calculated and how they are to be paid.

*Justification for procedure selected*

730. Regulations to prescribe the services for which the Board may charge fees under this clause will be subject to the negative procedure in both Houses of Parliament. Regulations made using this procedure would be administrative in nature. The choice of negative procedure is considered to provide for the appropriate level of scrutiny and opportunity for debate, if desired, without requiring a debate on administrative provisions as a matter of course. The Government will engage with and seek views from the sector before introducing any legislation using these powers.

**Clause 115(1) and (2): Power to make consequential provision**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure, unless the power is exercised to modify primary legislation then affirmative procedure*

*Purpose and context*

731. Clause 115 confers on the Secretary of State a regulation-making power to make further consequential amendments which arise from this Bill or regulations made under it. Regulations that make consequential provision may amend, repeal or revoke an enactment. Any regulations that amend or repeal primary legislation are subject to the affirmative procedure. Any other regulations under this clause are subject to the negative procedure.

*Justification for delegation and procedure selected*

732. This power may only be exercised in connection with a provision of the Bill or regulation made under it. It is not possible to establish in advance all consequential provision that may be required. A power is needed to avoid any legal uncertainty or legal lacunas after the Act comes into force. We consider it is appropriate that amendments to primary legislation will follow the affirmative procedure in both Houses of Parliament, and that consequential provisions to secondary legislation will follow the negative procedure.

## **Clause 118: Commencement and transitional provision**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: None and negative procedure*

### *Purpose and context*

733. The Secretary of State is given the power to bring into the force the provisions of this Bill through regulations. As listed in subsection (2) a number of sections come into force when the Bill becomes law.

### *Justification for delegation and procedure selected*

734. This is a standard clause for commencing the provisions of an Act by regulations and it is usual for this not be subject to a procedure in Parliament. The power to make transitional etc provisions in relation to the implementation of the Bill will be subject to negative procedure in both Houses of Parliament. We consider that procedure to provide the appropriate level of scrutiny.

**Ministry of Housing, Communities and Local Government**  
**20.07.2020**