

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