



# Building Safety Bill: Government response to pre-legislative scrutiny by the Housing, Communities and Local Government Select Committee





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Presented to Parliament  
by the Secretary of State for  
Housing, Communities and Local Government  
by Command of Her Majesty

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# Introduction

1. The Grenfell Tower Fire on 14 June 2017 represented the greatest loss of life in a residential fire since the Second World War. Following the fire, the Government commissioned the Independent Review of Building Regulations and Fire Safety led by Dame Judith Hackitt. Dame Judith's final report, published in May 2018, found that the current system for ensuring fire and structural safety in high-rise residential buildings was not fit for purpose and made 53 recommendations to address these failings.

2. The Government accepted all the Review's recommendations and published its Building a Safer Future consultation in June 2019. Nearly 900 responses were received from individuals, residents' groups and representatives from the fire safety and built environment industry. The Government published its response to the consultation in April 2020.

3. Having considered stakeholder feedback, the Building Safety Bill was published in draft on 20 July 2020, detailing a new system of building and fire safety which puts residents' safety at its heart. The key objectives of the Bill include:

- Ensuring there is greater accountability and responsibility for fire and structural safety issues throughout the lifecycle of buildings in scope of the new regulatory regime for building safety;
- Establishing a new Building Safety Regulator to oversee the new, more stringent regime for higher-risk buildings and drive improvements in building safety and performance standards in all buildings;
- Ensuring residents have a stronger voice in the system;
- Driving industry culture change - incentivising continuous improvement and addressing non-compliance;
- Providing a wider and stronger framework for national oversight of construction products.

4. The Housing, Communities and Local Government Select Committee conducted pre-legislative scrutiny of the draft Bill, launching a call for evidence on 5 August 2020. The Committee held eight public evidence sessions across September and October 2020. A list of the witnesses who appeared at each session is available in Annex B.

5. The Government supported the Select Committee's scrutiny, providing factsheets to explain some of the more complex policies and participating in oral evidence sessions. Lord Greenhalgh, Minister for Building Safety and Communities, appeared before the Committee alongside Government officials on 19 October 2020.

6. The Committee published their final report on 24 November 2020. Government has carefully considered the recommendations made by the Committee. This document outlines our response to each of the Committee's recommendations.

7. We have been carefully considering each of the Committee's recommendations in turn and have made substantial changes to the legislation and to our operational plans since the publication of the draft Bill.

8. The historic and wide ranging implications of the Building Safety Bill mean that it is crucial that we took the time to work through each recommendation in detail before reaching a final position.

9. We have recognised the Committee's recommendations around the need to ensure that leaseholders should not face unaffordable costs for historic remediation work and have worked to develop a plan that ensures that leaseholders are protected.

10. We recognise the general concerns that the Committee has raised in relation to the use of secondary powers in the Bill and have been working throughout the past six months to ensure that we are able to deliver clarity for stakeholders and parliamentarians through the publication of documents related to secondary legislation alongside the Bill.

11. We would like to thank the Committee for the work they have undertaken during the pre-legislative scrutiny and the stakeholders that participated constructively in the call for evidence and oral evidence sessions. This process has been valuable in ensuring the Building Safety Bill delivers fundamental reform of the building safety system.

## General recommendations

### Recommendation 1

<p>We urge the Government to include as much detail in the Bill itself or to publish the secondary legislation alongside it. It is especially important that this be done for core provisions such as the Gateways process and the regulation of construction products.</p>
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12. We agree with the Committee that it is important the Government's intentions for how key elements of the new regulatory regime will operate are made clear during passage of the Building Safety Bill.

13. The use of delegated powers is essential for Government to respond quickly to an evolving evidence base on building safety and any emerging risks. Through secondary legislation, the Secretary of State will be able to make regulations that support the Building Safety Regulator in shaping and flexing the assurance regime based on evidence of risk; while providing clarity to the sector on its responsibilities and duties.

14. It is the Government's intention to publish further detail on key elements of the new regime, including the Gateways process and construction products before the relevant clauses are considered in committee. We want to work with residents, industry, and Parliament to ensure these regulations are fit for purpose. In publishing these during passage of the Bill, we aim to give Parliament sufficient opportunity to scrutinise and comment on our proposals.

## Recommendation 2

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

15. The Government agrees with the Committee that powers to amend primary legislation should be included only where justified and necessary. The power under paragraph 16(1)(c) of Schedule 8, for example, would have allowed the Secretary of State to amend primary legislation via construction products regulations. We have decided that this specific power is unnecessary, and we will remove it from the version of the Bill which is introduced.

16. We have taken powers to amend primary legislation in a limited number of places. In the draft Bill, these powers (which are each subject to scrutiny under the affirmative procedure in Parliament) were:

- **Clause 12** – powers to amend or repeal the provisions in (Clauses 9, 10 and 11 of the draft Bill) creating the three statutory committees (the Building Advisory Committee, the committee on industry competence and the residents’ panel).
- **Clause 20(1)** – power to modify how Part 4 of the Bill applies in relation to a category of higher-risk building. It allows for elements of Part 4 to be disapplied if they are considered unnecessary to manage building safety risk (for example because existing requirements already exist in law). This clause and the ability to amend the application of Part 4 allows the regime to be proportionate and targeted, allowing only certain requirements to be applied to certain buildings (in line with the risks they pose).
- **Clause 32 + Schedule 3** – power in paragraph 4(7) of Schedule 3 to the Bill to amend the ombudsmen provisions.
- **Clause 49** – power to amend sections 5 and 54 of, and Schedule 4 to, the Building Act 1984 for public bodies – this would enable amendments to the higher-risk building regime to be applied for specified public bodies. Currently these public bodies may supervise their own building work instead of the local authority, amendments could modify this for higher-risk building work.<sup>1</sup>
- **Clause 60(5)** – power to amend definitions of ‘occupied’ and ‘resident’, with regards to higher-risk buildings.
- **Clause 61(6) and (7)** – power to modify Part 4 of the Bill where there is more than one Accountable person and power to amend the definition of the Accountable Person.
- **Clause 82(9)** – power to amend what the residents’ engagement strategy must include.
- **Clause 86(8)** – power to amend the duties that residents of a higher-risk building must comply with.
- **Clause 88** – s17H(6) includes a power to amend landlord obligations 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.

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<sup>1</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. To date, no such bodies have been specified in building regulations.



- **Clause 96(7)** – power to amend the subsection setting out the circumstances in which the First-tier Tribunal to make an order to appoint a Special Measures Manager.
- **Clause 110 + Schedule 8** – paragraph 16 of Schedule 8 includes a power to make amendments (including amending primary legislation) when making construction products regulations. This power will be removed from the version of the Bill which is introduced.
- **Clause 115 + Schedule 8** – power to make consequential amendments (including amending primary legislation) which arise from this Bill or regulations made under it.

17. We will only take these powers where we consider it absolutely necessary to do so. In each case, the use of the power to amend primary legislation will be subject to the affirmative procedure to ensure Parliament will have sufficient opportunity to scrutinise and approve them.

### Recommendation 3

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

18. The Government welcomes the Committee’s recommendation to provide clarity to industry about what is required by when. We are working with the Health and Safety Executive to develop our plan to commence the new regime and have asked the Health and Safety Executive to develop a transition plan for implementing the new regime. This work is being overseen by a Transition Board chaired by Dame Judith Hackitt and Ministers holding regular stocktakes with the Health and Safety Executive on progress.

19. We will publish an outline transition plan at introduction. We will continue to refine and provide further information on transition during the passage of the Bill, working closely with the Health and Safety Executive. As part of this commitment, we have asked the Health and Safety Executive to include what to expect and when for those impacted by the new regulatory regime in their ongoing communications. This is a first step and we will continue to work through and publish greater detail throughout the passage of the bill.

20. Future dutyholders should not wait to prepare for the new regime. We urge future dutyholders to start preparing for the new regime immediately. A greater focus on safety and engaging residents in buildings for which they are responsible is encouraged now.

## Leaseholders and the building safety charge

### Recommendation 4

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

21. The Government shares the Committee’s concern that leaseholders are being left to pay for expensive remediation of historic building safety defects. The Government is clear that it is

the responsibility of the building owner or responsible person to ensure the safety of residents and have called on them to do all they can to protect leaseholders from these costs and where possible seek redress from those responsible.

22. We are widening the opportunities to seek redress against those who created these defects when flats and houses were built. We are extending the limitation period for claims under section 1 of the Defective Premises Act 1972 from six years to fifteen, with retrospective effect. This means that, as well as applying to future work, claims will also be able to be brought for buildings that were completed up to fifteen years prior to the provision coming into force.

23. It is vital that remediation work is done properly. That is why, going forward, we are also expanding the type of work that qualifies for compensation under the Defective Premises Act to include remediation and refurbishments. We will also be commencing section 38 of the Building Act 1984, which allows compensation to be brought for physical damage caused by a breach of building regulations. Both measures will be subject to a fifteen-year limitation period and will strengthen rights to redress against inadequate work done in the future.

24. Where leaseholders are being passed costs, the Government has committed to fully funding the cost of replacing unsafe cladding for all leaseholders in higher-rise buildings of more than seven storeys (18 metres) - ensuring tax-payer funding is targeted at removing the most dangerous materials from the highest risk buildings in line with independent expert advice.

25. The Government agrees with the recommendation to exclude historical costs from the Building Safety Charge. The Building Safety Charge will only cover the ongoing costs of the new regime. This will give leaseholders assurance, transparency, and protection in relation to ongoing building safety costs. We believe that by providing this transparency on these costs leaseholders will be able to hold their Accountable Person to account for providing safety to their building in the most effective and efficient way.

## **Recommendation 5**

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

26. The Government has made an unprecedented investment in building safety to protect leaseholders from unaffordable costs. The Government has committed to fully fund the cost of replacing unsafe cladding for all leaseholders in higher-rise buildings of over seven storeys (18 metres) - ensuring tax-payer funding is targeted at removing the most dangerous materials from the highest risk buildings in line with independent expert advice.

27. We recognise that the industry that was responsible for this legacy of unsafe buildings should be made to contribute for compromising public safety. This is why we will look to introduce a levy on developers as part of the process of the new regime.

28. We are also extending the limitation period under section 1 of the Defective Premises Act 1972 from six years to fifteen, with retrospective effect. The Defective Premises Act creates a right to bring a claim for compensation in the civil courts for work which has made a dwelling unfit for habitation. Our change means that claims for compensation will be able to be brought for buildings that were built defectively up to fifteen years prior to the provision coming into force.

## **Recommendation 6**

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

29. The 'Building Safety Charge' clauses in the draft Building Safety Bill are intended to give leaseholders additional assurance and transparency on costs for the ongoing costs of building safety. It was never the intention that payment for large scale remedial works should be paid by leaseholders within 28 days.

30. Where there is a need to fund remediation of historical defects we will introduce provisions to provide greater protection to leaseholders, ensure they have the collective ability to seek redress and/or require the building owner to do so; and, are not faced with unaffordable upfront costs.

31. Even without special arrangements being made in relation to capital costs there will be no question of such demands landing on leaseholders without notice, as those are costs in respect of which a detailed consultation process will be required. If leaseholders are liable for building safety works, these should be made payable via the service charge and all the existing provisions will remain. Leaseholders will have the protection that, unless they have been properly consulted (or the First Tier Tribunal grants the landlord dispensation from the strict consultation requirements) the charges will be capped.

32. As is the case currently, consultation requirements can only be dispensed with when the landlord makes an application to the Tribunal to dispense with the need to consult.

## **Recommendation 7**

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

33. We agree with the Committee's recommendation that charges should be transparent. The proposed Building Safety Charge has been designed to ensure that the costs leaseholders pay for building safety measures, and how they pay for them, are transparent and reasonable.

34. We do not however consider it appropriate to rely on existing service charge provisions to secure payment of the building safety costs. Service charge provisions vary and we can't guarantee that provisions will clearly be in place to enable the recovery of the building safety costs.

35. The prerequisites which apply to the collection of the charges will also vary. For instance, under some leases a "reasonable proportion" of the service charge may be collected in advance and under other charges can be raised only subsequent to costs having been incurred. We would effectively be seeking to amend the service charge provisions in any lease 'sight unseen'.

36. The separation enables leaseholders to start with a 'clean slate' in respect of building safety charges and upon introduction, all leaseholders will have a nil balance in respect of the charge irrespective of any service charge debt. It also ensures that payments cannot be subsumed by general service charge payments or debt or applied towards matters other than building safety. A leaseholder in dispute with the landlord may wish to withhold payment of service charges but will be able to make payments of the building safety charge.

37. Creating a separate Building Safety Charge allows us to put in place statutory rights and protections which will work with the new statutory building safety regime and it will allow Accountable Persons to anticipate and be responsive to safety issues without being restricted by pre-existing terms and rules which were not necessarily established with the Building Safety Act regime in mind.

38. The Building Safety Charge provides greater certainty and clarity to leaseholders and increases transparency on the costs charged in relation to building safety. It provides a clear cost recovery mechanism for leaseholders, ensuring a fair application of the statutory regime, which is intended to provide additional safety measures for all who live in higher-risk buildings.

## The Building Safety Regulator

### Recommendation 8

<p>We strongly recommend that the initial scope of the regime be enshrined in the Bill itself, and not be left to delegated legislation, in order to give stakeholders the certainty they need to prepare for the new regime.</p>
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39. We agree with the Committee's view that including the initial scope of the regime on the face of the Bill will provide more certainty for stakeholders. Consequently, we have amended the Bill to include most of the criteria for the initial scope of the regime. The Government intends to publish the draft secondary regulations for scope upon introduction of the Bill to Parliament to provide the necessary technical details. This is to allow for appropriate Parliamentary scrutiny and to provide further certainty to stakeholders during Bill passage so they can prepare for the new regime.

## Recommendation 9

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

40. The Government welcomes the Committee’s recognition that other factors may be suitable when exploring the future expansion of the definition of “higher-risk buildings”. While Government agrees there is a limit to the types of factors upon which the scope of major incident regimes can be expanded, Government does not agree with the Committee’s recommendation that such factors should be specified in the Bill itself by way of a ‘have regard’ requirement, however, the explanatory notes outline several factors which could determine expanding the scope of the regime (like height, size, design, use, purpose, or other characteristics) and detailed discussion continues.

41. The Government acknowledges the concerns raised about building safety arising from the quality of design and construction in buildings occupied by those unable to evacuate themselves or without assistance. Consequently, we have widened the scope of the design, construction and refurbishment elements of the regime to include care homes and hospitals which are 18 metres or more in height or at least 7 storeys. Care homes and hospitals are the two uses of building likely to be occupied by those unable to evacuate themselves or without the assistance of others, which were not included in the initial scope indicated by the draft Bill.

42. Under the Bill, the Regulator must monitor the scope of the regime continuously. This makes a specific timescale for a review unnecessary.

## Recommendation 10

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

43. We welcome the Committee’s satisfaction with the wording of Clause 16 of the draft Bill. Based on further feedback during pre-legislative scrutiny we have amended the clause to provide greater clarity on the risk that needs to be managed under part four of the bill. Specifically, we have amended “fire” to “spread of fire”.

44. Government will publish guidance clarifying that dutyholders must mitigate or control the building safety risks regardless of the cause (including electrical and gas failures).

45. We agree that the definition of “building safety risk” should be kept under review. The Bill makes express provision for this. Government has designed the regulation power under clause 16 of the draft Bill to ensure the definition of “building safety risk” can be expanded in the future should the evidence support it.

46. In addition, Clause 5 of the draft Bill provides that the Building Safety Regulator is required to keep under review, on an ongoing basis, the safety of people in and about buildings, including the risks arising from buildings. As part of its broader oversight function, the Building Safety Regulator will also have a range of data, on existing and emerging building standards and safety risks, at its disposal.

47. This function supports Clause 17 of the draft Bill, which enables the Building Safety Regulator proactively to make recommendations that a new building safety risk should be prescribed, should they be of the view that it would cause a major incident if it occurred in a higher-risk building. If the Secretary of State decides not to act on such a recommendation, he must publish his reasons for that decision.

## **Recommendation 11**

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

48. The Government agrees with the Committee's recommendation that it keep the objectives of the Building Safety Regulator under review, and we believe the draft Bill already contains the appropriate mechanisms for review.

49. We are grateful to the Committee for recognising the strong case for the Building Safety Regulator starting its life with clear objectives around securing safety and improving building standards. The Government believes these are the right statutory objectives for the Building Safety Regulator at the present time.

50. The Government does not believe that it would be necessary or beneficial to make property protection a statutory objective of the Building Safety Regulator, at this time. Our view is that the priority should be safety of people and standards of buildings. A focus on property protection would risk undermining those objectives and diluting the focus of the regulator.

51. The Government will regularly review the Building Safety Regulator's objectives, alongside the effectiveness of the Regulator and the building regulatory system. Clause 34 of the draft Bill therefore, requires that the Government regularly commissions an independent review of the effectiveness of the provisions set out in the Bill and the Building Act 1984, and of the effectiveness of the Building Safety Regulator.

52. As required under clause 34 of the draft Bill, the independent reviewer will consider the Building Safety Regulator's objectives, and how well it is performing against them. The first review will occur no more than five years after Royal Assent. We believe that would be the appropriate point to consider whether there is a case for extending the Building Safety Regulator's objectives, as there would have been sufficient time for the Building Safety Regulator to bed in and make progress on delivering against its objectives on building safety and standards.

53. Following the independent periodic review, the Government will have to consider what legislative and/or non-legislative steps are required to implement recommended improvements.



Given the likelihood that the periodic review will make recommendations covering several legislative provisions, the Government does not think it is possible to avoid the potential need for primary legislation by taking further delegated powers in advance.

## **Recommendation 12**

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

54. We agree with the Committee that the newly strengthened and expanded system of Voluntary Occurrence Reporting is established and operated independently from the Building Safety Regulator. To that end, we accept the Committee's recommendation and have amended Clause 8 accordingly.

## **Recommendation 13**

We recommend that clause 12 be amended to delete the Secretary of State's power to abolish.

55. The Government is grateful to the Committee for recognising the importance of the committees that the Building Safety Regulator must set up. The inclusion of statutory Committees in the Bill reflects the Government and the Health and Safety Executive's commitment to always seek strong input from technical experts and residents in the work of the Building Safety Regulator, and to support industry to drive improved competence.

56. The Government agrees with the principle that such input should continue. Any proposal to replace, abolish or merge the statutory Committees should form part of a wider set of reforms to improve the way the Building Safety Regulator secures such input, with the aim of improving building safety and standards. Therefore, any proposals to replace, abolish or merge statutory Committees should be properly consulted on and approved by Parliament through the affirmative procedure.

57. The Government does believe that the Building Safety Regulator should be able to adapt its committee structure over time, as the scope of the higher-risk regime evolves, different building safety and standards issues emerge, and regulatory best practice changes.

58. The benefits of such adaptation – for both the Building Safety Regulator and the regulated community – are illustrated by the Health and Safety Executive itself. Since its inception in 1974, the Executive has witnessed major changes in both the profile of British industry and its own governance. This in turn has meant changes to 'industry' and 'subject' advisory committees, established in the days of the former Health & Safety Commission through a process of managed change reflecting industrial, technical, legal, and administrative developments. The committees on which the Executive can now call represent a rich mix of advisory and stakeholder-led bodies, each of them geared to the needs of their respective industries.

59. Clause 12 of the draft Bill, alongside the provisions for consultation on regulations in Clause 7 of the draft Bill, ensures that there are strong safeguards in place to test any recommendation from the Building Safety Regulator to replace, abolish or merge a statutory committee.

60. The Building Safety Regulator must first formally consult on their proposals before advising the Secretary of State. And any resulting changes must then be put before Parliament in regulations and approved by both Houses using the affirmative procedure. The Government would expect the Building Safety Regulator to set out in its consultation how the change to the committee forms part of a wider proposal to improve the way it secures technical expertise, resident, or industry engagement. The Government believes that these substantial safeguards ensure that Clause 12 of the draft Bill will only be used to enhance building safety and standards by enabling the Building Safety Regulator to learn from experience, adapt and improve.

## **Recommendation 14**

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

61. The Government welcomes the Committee's recommendations around the funding of the Building Safety Regulator, and cost recovery arrangements. The Government will publish further information about the charging for and funding of the regime and cost recovery to support scrutiny of the Bill.

62. The Government also agrees with the Committee's desire to see ringfenced funding for Building Safety Regulator functions of the Health and Safety Executive, and commits to take the necessary steps to ensure that building safety funding is not used to subsidise any other Health and Safety Executive functions, and vice versa.

63. The Government is committed to providing the funding required to set up the Building Safety Regulator and enabling it to deliver. This includes the funding the Health and Safety Executive will receive to set up the regulator in shadow and fully-fledged form, as well as ensuring that local authorities and Fire and Rescue Authorities (FRAs) are compensated for assistance that they will be expected to provide to the Building Safety Regulator in relation to the higher-risk buildings in scope of the new, more stringent regulatory regime. The Building Safety Bill ensures that this funding can be provided through cost-recovery from regulated parties and Government funding.

64. The Government is working closely with the Health and Safety Executive to develop the policy around cost recovery. The Health and Safety Executive is actively engaging partners to ensure the future cost recovery approach works, for example engaging the Joint Regulators Group in work to ensure reimbursement arrangements for local authorities and FRAs will work in practice.

65. The Government will work with the Health and Safety Executive to publish substantial further information on the cost recovery regime in Summer 2021, to support parliamentary scrutiny of the Bill.



# Design and construction

## Recommendation 15

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

66. It is the Government's intention to publish detail on the new dutyholder regime in draft secondary legislation during passage of the Bill. This will provide clarity about the definition of the Principal Designer role and ensure that Parliament and industry have sufficient opportunity to scrutinise our proposals.

67. Government recognises the importance of providing clarity and certainty to the sector about the role of the Principal Designer in the new regulatory regime. The Government will work with industry to identify and resolve any potential confusion with regard to the role.

## Recommendation 16

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

68. As set out in the response to recommendation 15, it is the Government's intention to publish detail on the new dutyholder regime in draft secondary legislation during passage of the Bill. As this detail is further developed, we will continue to engage with the industry about the availability of related insurance products.

## Recommendation 17

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

69. We have considered this recommendation carefully and agree with the objectives for third-party accreditation and registration, but we do not agree that provisions should be included in the Bill. This is because we consider the detail of how professionals and trades can demonstrate their competence to work on higher-risk buildings, and the assurance processes around this, should be for statutory guidance and wider industry guidance. This will offer greater flexibility to add to or amend in the future.

70. To ensure a robust and consistent approach to assuring competence, we are sponsoring the British Standards Institution to create a suite of national competence standards for higher risk buildings. This will include the core criteria for building safety in competence frameworks, and

the competence frameworks for the key roles of Principal Designer, the Principal Contractor and the Building Safety Manager. Those wishing to be appointed as a Principal Designer, Principal Contractor or Building Safety Manager for higher risk buildings will be expected to be assessed as meeting the relevant standards by organisations that are third-party accredited by a recognised body.

71. We recognise the important role third-party accreditation for the assessment of competence can play for those in key supervisory roles, as well as others with safety-critical roles. This needs to be proportionate, and it may not be appropriate or practical for every role associated with higher risk buildings, which will be wide ranging in their nature, to be subject to external assessment.

72. In the first instance, the expectation to be third-party accredited will be for those that carry out key supervisory roles, such as but not limited to Principal Designer, Principal Contractor, and Building Safety Manager. By setting this out in statutory guidance and wider guidance for the industry, it can be adapted and improved as the new regulatory regime develops and becomes established.

73. The Building Safety Bill requires a committee on Industry Competence to be set up by the Building Safety Regulator. This committee will have an important role in signposting to organisations which assess individuals as competent against their sector-specific competence frameworks. To ensure equivalence and consistency, we expect these organisations to be third-party accredited by a publicly recognised body such as UKAS or the Engineering Council. It will then be the responsibility of those organisations, if they choose to do so, to provide a register of individuals who are competent to work on higher risk buildings. Under this model, the committee would maintain a “register of registers.” Signposting to these registers could provide the assurance and transparency that dutyholders and residents will need. This is in line with recommendations from the industry-led Competence Steering Group’s recently published report [Setting the Bar](#) and discussions with a number of industry stakeholders.

74. In the meantime, we are also working with the Health and Safety Executive to set up an Interim Industry Competence Committee, which is expected to be in place by Summer 2021. Its immediate functions will be prioritised to support workstreams aimed at delivering the higher risk building regime, including to facilitate key industry work to raise competence and support a pipeline of competent people for the new regulatory regime. As an interim committee it will be evaluated, and lessons used to establish the formal Industry Competence Committee.

75. We encourage wider industry to engage with the Competence Steering Group’s report, including competence frameworks, and the BSI standards work, and prepare for independent oversight to be embedded within competence systems.

## **Recommendation 18**

We recommend that the details of the Gateway process be published in draft secondary legislation at the same time as the Bill.
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76. We agree with the Committee that industry needs clarity and certainty about the new more stringent Gateways regime as early as possible. The Government, Health and Safety Executive, and the Joint Regulators Group are working closely with industry to develop technical policy

through policy design trials, operational policy through operational design trials and ongoing stakeholder engagement.

77. Government sees it as prudent to ensure the technical and operational detail of Gateways two and three in published draft secondary legislation is as robust as possible, to avoid sowing confusion in what is a complex area with many regulatory interactions. Gateway one will be implemented separately to the Building Safety Bill via amendments to planning legislation.

78. It is the Government's intention to publish detail on the new Gateways two and three process in draft secondary legislation during committee stage of the Bill. This will ensure that Parliament and industry have sufficient opportunity to scrutinise our proposals.

## **Recommendation 19**

We urge the Government, if it does proceed with its PDR proposals, nonetheless to find a way of retaining the benefits of Gateway one.

79. We agree with the Committee that it is important to retain the benefits of Gateway one. Changes to the planning system will not undermine safety.

80. The Government's ambitious planning and building safety reforms will work together to speed up the delivery of homes where people will be, and will feel, safe.

81. We are also committed to ensuring the delivery of quality homes, whatever the route to planning permission, and agree with the Committee that we need to ensure that the benefits of gateway one can be retained under permitted development schemes.

82. Planning gateway one has been introduced by regulations laid 24 June 2021 (no 746) applies to certain planning applications and has two key elements:

- to require the developer to submit a fire statement setting out fire safety considerations specific to the development with a relevant application for planning permission for development which involves one or more relevant buildings, and
- to establish the Health and Safety Executive as a statutory consultee before the grant of planning permission in certain circumstances.

83. Planning gateway one will help ensure that applicants and decision-makers consider planning issues relevant to fire safety, bringing forward thinking on fire safety matters as they relate to land use planning where development proposals involve a relevant building (e.g. site layout, water supplies for firefighting purposes and access for fire appliances) to the earliest possible stage in the development process to deliver schemes with a more integrated approach to thinking on fire safety.

84. MHCLG intend to introduce a fire safety prior approval for schemes involving a relevant building which are utilising a permitted development right. We anticipate that such schemes will in practice follow a similar process to planning gateway one, requiring the submission of fire safety information relating to land use planning issues and with LPAs requesting advice from HSE on fire safety elements of the proposals. Therefore, relevant residential buildings whatever their route to permission will bring forward thinking on fire safety matters as they relate to land use planning.

## Recommendation 20

We recommend that the secondary legislation that will establish the Gateway process mandate the appointment of dutyholders before Gateway one.

85. Government welcomes this line of enquiry.

86. The new planning gateway one requirements which have been introduced by regulations laid 24/06/2021 (no 746) use the existing planning system. Gateway one requirements apply to applications for planning permission, and any planning permission granted rests with the land, not the applicant, and the land can be sold with the benefit of permission to another party. Once planning permission has been granted any development must take place in accordance with the permission granted and any conditions imposed by the local planning authority. There will not be a formal requirement for 'dutyholders' to be appointed before planning gateway one.

87. We have been working with local planning authorities, fire safety professionals and engineers, and housing developers and providers to develop the fire statement and planning gateway one requirements. This has provided valuable insight and from this we expect professionals will be appointed to complete the fire statement (fire statements will be required to be submitted with planning applications for developments which involve at least one in-scope building), and will ensure that the early consideration of fire safety is incorporated into development proposals and considered as part of the planning application process.

## Recommendation 21

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

88. To make all buildings safer we need to raise levels of competence and accountability and have more effective monitoring of conduct and performance in the building control sector.

89. To achieve this, the Bill introduces a new professional framework for the whole building control sector. Both public and private sector building control bodies will have to obtain and consider the advice of a registered building inspector before exercising key regulatory activities and functions. An individual who wants to work as a building inspector will need to demonstrate that they meet rigorous criteria set by the Building Safety Regulator, which may include measures of competence, being a fit and proper person, expertise and previous experience.

90. The Building Safety Regulator will decide whether or not to grant registration and if any restrictions or conditions should be imposed on the inspector's registration. Restrictions may include matters such as the type or height of buildings an inspector may advise on.

91. All building inspectors will have to adhere to a code of conduct, which must cover things such as the avoidance of conflicts of interest. The Building Safety Regulator will be able investigate the conduct of individual building inspectors and will have a variety of sanctions it can impose, up to removal from the register.

92. The Bill also establishes a new system of oversight of the performance and standards of building control bodies. The Building Safety Regulator will have powers to set rules about what operational standards must be met, and about practices and procedures to be adopted. Local authorities and registered building control approvers will have to adhere to these rules and comply with the requirements in the exercise of their duties and functions. The Building Safety Regulator will be able to revise these rules to reflect best practice requirements as the industry changes.

93. The Building Safety Regulator will be able to direct building control bodies to provide it with information and reports relating to how they exercise their building control functions and it will be an offence not to comply. The Building Safety Regulator will have powers to investigate any building control body that it believes to have contravened the rules. Where contravention of operational standards rules is identified, the Building Safety Regulator will have a new suite of powers it can use, including issuing notices to drive up performance, with the ultimate sanction of transferring functions from the failing local authority or cancelling the approver's registration.

94. These are important and far-reaching interventions in the building control sector that will complement the removal of the ability for a person carrying out higher-risk building work to be able to choose their own building control.

95. In light of these new measures we are not convinced that removing dutyholder choice entirely from the building control system and replacing it with a system of independent appointment for all building control work is necessary.

## **Recommendation 22**

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

96. The Government strongly believes that setting up a single, national Building Safety Regulator is the best way to deliver the change that is needed in building safety and standards. Combining oversight of building control and direct delivery Of regulation for the higher-risk buildings in scope of the more stringent regulatory regime will:

- Ensure a coordinated drive towards a highly competent building control profession and rapid improvement to the regulation of buildings in scope;
- Avoid the confusion and lack of coordination that could result if we set up multiple new national bodies to deliver the reforms to building control; and
- Be the most efficient approach to public service delivery.

97. The Government does not believe that this combination of functions will result in conflicts of interest that cannot be effectively managed and/or mitigated. The Health and Safety Executive's Chief Executive, Sarah Albon, stressed in her evidence to the Committee that the Building Safety Regulator will put safety first, as the Health and Safety Executive has always done. This position is backed by the force of law, as the Building Safety Regulator's statutory objectives mean it must deliver its building functions with a view to securing the safety of residents and improving building standards.



98. The Health and Safety Executive is committed to effective mitigation of any (perceived or real) conflicts of interest resulting from its Building Safety Regulator functions. The Health and Safety Executive is taking time to carefully think through how this system will be set up to ensure that the necessary safeguards, including suitable control frameworks, are in place. These control frameworks will be subject to oversight by the department and appropriate compliance checks, for instance through internal and external audit.

99. The Health and Safety Executive specifically commits in their controls that the staff who register, investigate and take decisions on sanctions against individual registered building inspectors and building control bodies will be wholly operationally independent of the staff responsible for delivering the regulation of higher-risk buildings, as well as those responsible for standard-setting.

100. Further, the Health and Safety Executive is committed to transparency, in line with the principles enshrined in the Regulator's Code. The Building Safety Regulator will, therefore, publish its policies on how it intends to carry out its functions, including specifically how it will mitigate any conflicts of interest (perceived or real) arising from its building functions.

101. The Health and Safety Executive, as Building Safety Regulator, will be responsible to Ministers and ultimately to Parliament for its performance, as is typical for arm's-length bodies sponsored by central government. The Bill provides for an additional safeguard going beyond this usual practice, by requiring a regular independent review of the whole system, and specifically the effectiveness of the Building Safety Regulator. This independent review will provide another source of oversight and transparency over how the Building Safety Regulator delivers its functions.

102. In light of these safeguards and commitments, the Government does not believe that changes to the Bill are needed to mitigate any potential conflicts of interest faced by the Building Safety Regulator.

### **Recommendation 23**

<p>We recommend that the Bill place an explicit duty on the regulator to monitor and assure the competence of local authority building control teams through provisions comparable to those for the registration of building control approvers, perhaps by mandating UKAS accreditation for all LABC teams.</p>
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103. We agree with the Committee that building control teams in local authorities should be monitored as well as in building control approvers. To achieve this the Bill gives the Building Safety Regulator new powers to set operational standards rules. Building control bodies must comply with the operational standards rules in the exercise of their building control functions, with the Building Safety Regulator checking compliance by mandating periodic data returns and conducting audits of building control bodies. This will allow the Building Safety Regulator to assess the performance of their management systems, policies, and procedures to ensure they are providing a safe and competent service.

104. In addition, individual building inspectors will have to be registered with the Building Safety Regulator, and both local authorities and building control approvers must obtain the advice of a registered building inspector before making important building control decisions.

105. We do not agree, therefore, that the recommendation that provisions comparable to those requiring the registration of building control approvers should apply to local authorities is needed. Local authorities have a statutory obligation to provide a building control function, unlike building control approvers; and we think it would be inappropriate to mandate UKAS accreditation to deliver that statutory function.

## Occupation

### Recommendation 24

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

106. The Committee have rightly recognised that the complexity of ownership structures for many of these buildings will lead to multiple Accountable Persons.

107. We, therefore, welcome this recommendation and propose to introduce provisions in the Bill requiring Accountable Persons to co-operate in relevant circumstances. This will be supported by guidance, as necessary, when the regime is operationalised.

### Recommendation 25

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

108. Our approach is intended to ensure that the new building safety regime works with existing regimes for all regulated buildings to create a layered regulatory approach that is proportionate to risk, while ensuring there are no gaps or loopholes between these two regimes. The Home Office have consulted on a requirement for the Responsible Person to identify themselves as part of the fire risk assessment process, and likewise the Accountable Person, as defined in the draft Building Safety Bill, must do the same as part of the building registration process for buildings in scope.

109. In many cases, we expect that the Responsible Person and Accountable Person will be the same person. Where this is not the case, Clause 102 in the draft Building Safety Bill imposes a duty on Accountable Persons to co-operate with Responsible Persons sharing the same building, and extends Responsible Persons' existing duty to cooperate to Accountable Persons to ensure a whole-system approach to the management of building and fire safety risks. We will publish guidance for dutyholders to support compliance with their respective duties in buildings where the building safety regime will apply, subject to the passage of the Bill.

110. We are working with stakeholders and experts to clarify accountability in buildings with complex ownership structures and will amend the Bill to ensure different dutyholders' responsibilities are clear and transparent.

111. We will monitor compliance with Accountable Persons and Responsible Persons' duties through regulatory and enforcement activity. The draft Building Safety Bill also contains a provision for a periodic independent review of the effectiveness of the Building Safety Regulator, the operation of the regime and of other connected matters as specified. This could include reviewing the interaction between regimes.

## **Recommendation 26**

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

112. We welcome the views of the Committee and agree that the Building Safety Manager has an important role to play in assisting the Accountable Person in meeting its statutory obligations under Part 4 of the draft Bill.

113. Government has looked again at the role of the Building Safety Manager following the Committee's recommendation and as a result of further engagement with stakeholders, has sought to clarify the role in legislation to aid understanding. In particular, stakeholders expressed concerns that placing statutory obligations on the Building Safety Manager as well as the Accountable Person 'blurred' the lines of accountability, and that it would be challenging to find candidates for a role that requires specialisms in a number of areas.

114. To that end, the duties as set out in Part 4 of the draft Bill now firmly sit with the Accountable Person and the obligations on the Building Safety Manager, and some of the architecture around the Building Safety Regulator's role, have been removed. For these reasons we have not placed a duty on the Building Safety Manager to inform the Accountable Person of their responsibilities under the Bill.

115. There is, however, a requirement on the Accountable Person to appoint a competent Building Safety Manager to assist the Accountable Person, with duties relating to planning, managing and monitoring as the Accountable Person regards as necessary to fulfil its Part 4 obligations. This appointment role can be fulfilled within the Accountable Person's organisation. The Building Safety Regulator will produce guidance to facilitate the Accountable Person in meeting their responsibilities, with complementary best practice guidance on the operationalisation of that support role by the Building Safety Manager.

## **Recommendation 27**

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

116. We welcome the Committee's views and agree that clear and simple guidance will be required to set out what is meant by 'all reasonable steps' within the new safety case approach. These materials will require proper consideration to ensure they are balanced and proportionate.



117. To this end, the Government, the shadow Building Safety Regulator and the Joint Regulators Group are working with stakeholders and partners to develop the necessary guidance products, including further materials on building safety cases that will be informed by both safety case design trials already underway and research commissioned into representative major accident scenarios. The materials will also include a discussion of the prevention principles to which dutyholders must have regard when deciding on the safety measures to be introduced.

118. We will publish a first draft of these principles during passage of the Bill.

### **Recommendation 28**

We therefore recommend that the Government publish guidance alongside the Bill outlining what information safety case reports will be required to contain.

119. Government welcomes this recommendation.

120. Strong safety management systems are pivotal to the success of the new regime in occupation to ensure duty holders are managing risk. The Safety Case Report is the written explanation of how those systems deliver the right outcomes.

121. The form and content of the report will be set out in regulations accompanied by clear guidance. The Government, the shadow Building Safety Regulator and the Joint Regulators Group are working with industry to develop the necessary guidance products, and we are also working to build best practice support on how to develop a safety case report. Initially this has been focusing on getting stakeholders to understand the key elements of a proactive and effective risk management system to deliver safety outcomes. Over the coming weeks and months we hope to share more with Parliament about this approach.

122. The safety case policy design trials are informing and supporting this work.

### **Recommendation 29**

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

123. We agree with the Committee that the role of the Building Safety Manager and the supply of adequately skilled individuals, backed by the necessary organisational capability (having adequate management systems and policies in place and ensuring that its staff have the right competence to undertake their roles etc.) to perform this role is critical to the success of the new regime. We understand the Committee's desire to give clarity on the competence frameworks as soon as possible.

124. We are sponsoring the British Standards Institution (BSI) to develop the competence standard for the role in a Publicly Available Specification (PAS). This work started in January 2021 and is expected to be completed in early 2022. The standards development work will involve much of the same membership as the Working Group and will build on the work in their report on the key

competencies for the Building Safety Manager role. We are very pleased that the Chair of Working Group 8 has agreed to lead the development of the Building Safety Manager PAS. We expect that the content of the future standard will be aligned with the group's report - Safer People, Safer Homes: Building Safety Management - which is available [here](#). Industry should look to this now for guidance on how to prepare for the new role and engage with the BSI process as the PAS is developed.

### **Recommendation 30**

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

125. We have considered this recommendation carefully. Government considers that the decision to register Building Safety Managers is best taken forward by industry, and we encourage them to do so.

126. We agree that a publicly accessible register of competent Building Safety Managers may help bring assurance to the Accountable Person in their decision to appoint a competent Building Safety Manager and encourage transparency in their appointment to residents. It can also encourage revalidation of competence and support continuous professional development. However, the Government's view is that this should not be the only indication that the Building Safety Manager is competent to carry out their role for a particular building, which may require specific skills, knowledge, experience and behaviours for the particular building type. Registration as a Building Safety Manager should therefore only be seen as a starting point for competence.

127. A register of assessed Building Safety Managers must not negate the duties on the Accountable Person to carry out checks on the competence of the Building Safety Manager. We wish to avoid a situation where choosing someone from a register and employing them as a Building Safety Manager becomes a tick-box exercise, rather than an important part of the Accountable Person's responsibility to carry out due diligence. Any register should be supported by robust and consistent assurance processes, which includes independent oversight of those assessing the competence of those working on higher risk buildings.

128. As part of ensuring the regulatory functions of the new regime, the Building Safety Regulator will be responsible for assisting and encouraging the competence of the built environment industry, which includes those that manage buildings. While the Building Safety Regulator will support industry to build its own capability and to continuously improve, it is important that industry takes ownership of improving competence to ensure change is meaningful and sustained.

### **Recommendation 31**

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

129. We will continue to work with the insurance industry to ensure that professional indemnity insurance is available to Building Safety Managers. We will remove statutory duties on the Building Safety Manager, vesting responsibility – and accountability – for the building safety duties solely on the Accountable Person. The Accountable Person will, instead, be assisted by the Building Safety Manager. This should go some way to clearly delineating the role of the Building Safety Manager as far as professional indemnity insurance is concerned.

130. The Government's position on competence frameworks for the role of Building Safety Managers is outlined in the response to recommendation 29.

### **Recommendation 32**

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

131. We welcome the views of the Committee and note the recommendation.

132. Government has looked again at the responsibilities and liabilities of the Accountable Person and Building Safety Manager following the select committee proceedings and as a result of further engagement with stakeholders. In particular, stakeholders expressed concerns that placing statutory obligations on the Building Safety Manager as well as the Accountable Person 'blurred' the lines of accountability, and that it would be challenging to find candidates for a role that requires specialisms in a number of areas.

133. We have sought to make changes to make it clear that the duties set out in Part 4 of the draft Bill sit firmly on the Accountable Person. There is a requirement on the Accountable Person to appoint a competent Building Safety Manager to assist the Accountable Person, with the day to day management and processes as the Accountable Person regards as necessary to fulfil its Part 4 obligations. Guidance will be produced to assist the Accountable Person in meeting their responsibilities, with complementary best practice guidance on the operationalisation of that support role by the Building Safety Manager.

### **Recommendation 33**

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

134. We are grateful to the Committee for acknowledging the importance of residents' engagement.

135. The Building Safety Bill puts residents at the heart of our strategy for building safety by giving residents in higher-risk buildings a stronger voice, providing better information on measures put in place that affect the safety of their building, and ensuring residents can raise their concerns to the Accountable Person and the regulator. Crucially, the Accountable Person must produce a Resident Engagement Strategy setting out how they will promote the participation of residents in key safety decisions about their building.

136. The Government strongly encourages the formation of a residents' group in every building for participation in the making of building safety decisions.

137. However, the Government believes that this should be entirely voluntary and for residents to decide for themselves. The Government does not believe that it would be appropriate, or practicable, to legislate for the formation of a residents' group in every building.

### **Recommendation 34**

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

138. We agree that there should be no doubt whether force should only be used when appropriate. The Government does not consider that the use of force is appropriate in this context and the Bill does not permit this. The Accountable Person will need to request a right of access by following reasonable process before seeking an order from the County Court.

### **Recommendation 35**

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

139. We welcome the Committee's recommendation and agree that the safety of all residents is paramount.

140. In June 2020, Government brought forward legislation to require private landlords to require electrical installations to be inspected by a competent person every five years. This legislation was based on a recommendation of the Electrical Standards Working Group, established by MHCLG to review electrical safety standards in the private rented sector. The remit of the group did not extend to the social rented sector where standards were higher.

141. The Social Housing White Paper published in November 2020, committed Government to undertake a consultation on keeping social housing residents safe from electrical harm. This will consider the issue of extending safety measures in private rented sector to social housing. We will engage with other key stakeholders in an official led working group to inform the content of our consultation.

142. Government will publish guidance clarifying that the Accountable Person must take all reasonable steps to mitigate or control the building safety risks, the spread of fire and structural failure, regardless of the cause.

# Construction products and supplementary provisions

## Recommendation 36

We recommend that the Government publish with the Bill its proposals for improving the product testing regime.

143. The Government shares the Committee's concerns about improving the testing regime for construction products. The Government has announced an independent review into testing. The review will identify gaps and risks in the testing and certification system, and the Government will then consider how to respond to the findings. The leads and detail of this review were announced on the 22nd of April.

144. Within the Building Safety Bill, the Government will enable the existing construction products regulatory regime (which currently only applies to products with a European harmonised standard) to be extended to include other safety critical products placed on the UK market. In addition, we will improve accountability by requiring all construction products to be safe for the purposes they are designated for; and we are also strengthening oversight and enforcement of this extended regime through a new national regulator for construction products.

145. The Government will extend the requirements for products to be tested and to put factory controls in place to more safety critical products. This includes cladding panels and fire doors. This will provide greater confidence that construction products placed on the UK market consistently deliver to standards for specific products – and all construction products are safe to use. The powers contained in Schedule 8 are intended to ensure that construction products – where they are critical to building safety – are tested (and factory control processes put in place) on a non-voluntary basis.

146. Earlier in the year this Government announced that it will extend the remit of the Office of Product Safety and Standards (OPSS) to include regulation of construction products and that OPSS will receive funding up to £10m in 2021/22 to establish the national regulator for construction products. The regulator will have wide reach with stronger central enforcement powers, undertake the market surveillance that is required to identify and act against non-compliance and poor behaviour, have the powers to commission its own testing to investigate product safety concerns, support local Trading Standard and share its experience with industry to drive compliance and good practice. While we continue to prepare for the new regulatory regime for construction products, the national regulator will use the time before formal powers to establish itself as the new regulator and provide support to existing regulators within the scope of the existing regimes, until appropriate legislation is in place through the Building Safety Bill to allow the regulator to use its new powers.

147. The government will also extend the requirement for products to be tested before being placed on the market to more products, and where appropriate, require regular sample testing by a third-party accredited body. If products do not meet the relevant standard, then the relevant economic operator will be required to correct, withdraw and/or recall the product from the

UK market. If they do not do so the regulator will also have the power to prosecute companies for non-compliance. The forthcoming Building Safety Bill will ensure that the regulator has the powers it needs to oversee and improve the construction products system.

148. The Government is concerned about the adequacy of the testing regime. The Department's own investigations into fire doors has shown the need for change. Further evidence from the current phase of the Public Inquiry points to the same and we await its conclusions and recommendations.

149. The Government has also confirmed it is establishing the Construction Products Standards Committee to make recommendations on matters like conformity assessment processes, product test standards and to address weaknesses within the current testing regime such as the effectiveness and accuracy of current tests and ways to improve the testing regime. The Government is also actively engaging with industry-led interventions that are aiming to root out bad behaviour in approaches to how products are marketed in the UK, such as that being led by the Construction Products Association. Industry must continue to root out poor practice and exceed the standards it sets for itself, or else the Government will need to consider what steps it must take to regulate further.

### **Recommendation 37**

We recommend that the Government provide for the publication of test failures and re-run tests and for the establishment of an independent and unified system of third-party certification in order to introduce greater transparency and rigour into the regulation of construction products.
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150. The Government agrees with the Committee that third-party certification alone is unlikely to provide the improvements in transparency and accountability that we also think are needed. The Government has announced an independent review into testing. The review will identify gaps and risks in the testing and certification system, and the Government will then consider how to respond to the findings.

151. Placing a regulatory requirement on manufacturers to publish test failures and re-run tests may not aid transparency nor improve the understanding of product performance. Manufacturers test products for many reasons, including for product development. A test failure may legitimately inform the manufacturer's product design and have legitimate commercial value; a published test result must clearly relate to a product that is being placed on the market if it is going to be informative.

152. The draft Building Safety Bill provides for making it mandatory for more 'safety critical' products to be tested before they can be placed on the market, and for factory control processes to be put in place after the product has been placed on the market to ensure it continues to be manufactured to the claimed standard. Where appropriate, we will require sample testing of safety critical products by a third party.

153. We are also creating new enforcement powers so Trading Standards or the new National Regulator for Construction Products can act where it is found that a product does not meet its claimed standard. They will be able to enforce corrections, withdrawals or recalls from the market, and those in the supply chain based in the UK can be prosecuted. These interventions are



designed to improve the reliability of the performance information provided by manufacturers in the mandatory declaration of performance.

154. The Government is also exploring with industry a future voluntary framework to strengthen the quality of third-party certification.

### **Recommendation 38**

We recommend that the Government establish the capacity of the testing market in the UK and, if necessary, provide the necessary funding to increase that capacity so as not to hinder the implementation of the new product testing regime.
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155. The Government welcomes the Committee's attention to the capacity of the testing market in the UK.

156. The Government proposes to make regulations under Schedule 8 to the Building Safety Bill that will mean more (safety critical) products need to be tested before they can be placed on the market. Moreover, achieving a smooth transition out of the EU could have the effect of increasing demand on UK-based 'testing houses'. To that end, the Government shares the Committee's concern about domestic capacity and commits to taking the necessary steps to work with the UK testing market to address – where appropriate – capacity constraints as the regulations are developed.

157. The Government has announced an independent review into testing. The review will identify gaps and risks in the testing and certification system, and the Government will then consider how to respond to the findings. The Government will also establish the Construction Products Standards Committee, that will advise the Secretary of State on innovation in the product testing regime and measures to address weaknesses in that regime, which may include capacity for some types of testing.

158. The Government, through our Building Safety Bill and investment from this Spending Review is also supporting the delivery of a National Regulator for Construction Products with greater oversight of a new stronger and clearer framework for the regulation of construction products. As part of its remit, we intend to include introducing capability for the regulator to test the safety and performance of construction products to avoid constraints on market surveillance and coordination.

159. Having this testing capability is critical to the regulator being able to effectively carry out its market surveillance and enforcement duties, and with this increased capacity, our new regulator can test products to establish whether manufacturers are complying with the regulations. Testing would be targeted and risk-based, taking into account market intelligence and complaints data, to help the regulator to identify safety-critical issues before they arise or become commonplace. However, it is not our intention for the new regulator to replace the existing requirements for manufacturers to arrange for certification of their construction products.

## Recommendation 39

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

160. The Government agrees that testing of multiple products and products as part of a system should be required. However, we do not believe that it would be appropriate or practical for the Government to place this duty on manufacturers as they are not responsible in most circumstances for determining how their product is used after it has been sold. Therefore, it would be unreasonable and impractical for them to test their products in combination with every product on the market.

161. Building designers are responsible for the performance of systems made up of combinations of products in their designs and their use to thereby ensure that they meet the requirements of the Building Regulations for all buildings. The testing of combinations of products as part of a system is already necessary to demonstrate the compliance of product systems with the Building Regulations. The new regime reinforces this requirement by clarifying accountability, enhancing assurance, and strengthening enforcement.

162. Dealing with matters of system testing for compliance with the Building Regulations is necessarily different depending on the nature of the product and the desired performance. For instance, the compressive strength of a brick is a property that relates only to the brick, but the fire resistance of a brick wall is a property of the combination of bricks, mortar and other components that form the wall. This is a well-established principle that is recognised in the relevant standards and design codes. This is something that standards writers and regulators will keep under review.

163. The Building Safety Bill will also strengthen the regulatory checks for higher-risk buildings by placing new requirements on building designers as part of the more stringent regulatory regime for higher risk buildings. At the building control stage, before construction of the in-scope building can commence, dutyholders will have to demonstrate that they have appropriately considered and assured the safety of the building, that design assumptions are evidenced and that their design complies with Building Regulations. Such considerations might include the rationale for the materials and products proposed in the design and the Building Safety Regulator will need to be satisfied with the evidence provided before it approves the application.

## Recommendation 40

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

164. The Government is grateful to the Committee for recognising the importance of how construction products are effectively regulated. The Government considers, however, that the regulatory system for products does recognise that any single construction product may have multiple applications.

165. The regime to be established under Schedule 8 to the Building Safety Bill will operate in a similar manner to the existing Construction Products Regulations. Economic operators (manufacturers, importers and distributors) of individual products that fall under the relevant



product family will be required to ensure that the product's performance is declared against the agreed standard (and make sure that the product is manufactured to consistently perform to the declared performance). Many such standards set out a classification against which performance is tested and then declared.

166. For example, an existing EU harmonised standard for an insulation product will, as well as providing a measure of the product's thermal properties, include a measure of the product's combustibility and contribution to fire. A product can be rated from A1 (non-combustible) through to F (easily flammable). A designer or installer is then able to use this information to select an appropriate product for the intended application. To extend the example further, a designer could use this information to select a non-combustible product where this is required in the Building Regulations or choose a product with a lower fire rating in an application where this is not critical to safety.

### **Recommendation 41**

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

167. The Government welcomes the Committee's attention to this issue and accepts its recommendation.

168. The Government wants to make sure that products with European technical assessments are covered by the regime and will ensure the drafting of Schedule 8 to the Building Safety Bill achieves this before the bill is introduced to Parliament.

169. The Government notes that the Committee identifies that the wording 'other overseas standards' has caused confusion in the industry and will review this wording to improve its clarity. The intent is for the Secretary of State to be able to designate standards developed by recognised standardisation bodies, both domestic and international.

### **Recommendation 42**

The Government should indicate whether or how quickly it intends to review existing European harmonised standards.

170. The Government shares the Committee's views on the need for certainty on whether the UK will continue to recognise European harmonised standards.

171. The Government acknowledges that the British Standards Institution (BSI) is the UK's national standards body and the BSI a member of the European Committee for Standardisation (CEN) and the European Committee for Electrotechnical Standardisation (CENELEC). Both the CEN and the CENELEC are officially recognised by the EU as responsible for developing and defining standards at European level. The BSI plays an active role on behalf of the UK in developing harmonised standards for construction products and will continue to do so as the UK delivers a smooth transition out of the EU.

172. Our immediate priority is to ensure a smooth transition from the existing EU regulatory system for construction products to the new, UK based system. The government has committed to

continue to recognise the EU's CE marking for construction products until 1 January 2022. Going forward, the Government will have the flexibility to implement different standards for what will become 'designated' construction products in Great Britain, but we have no current plans to review these standards at this time. The Construction Products Standards Committee will be comprised of independent experts and it will advise the Secretary of State on whether voluntary industry standards for construction products should also become UK regulatory standards, a role currently undertaken by the European Commission

### **Recommendation 43**

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

173. We agree with the Committee that prospective purchaser who are forced to pull out of a purchase should be able to bring such complaints to the ombudsman. The draft Building Safety Bill already specifies that the scheme may include provision for persons, other than relevant owners of new build homes, to have complaints against members of the scheme investigated and determined under the scheme; and it would be up to the scheme to determine who those other persons are. We will also set this expectation with the Scheme appointed.

174. There are other persons that we would expect to be able to raise complaints with the ombudsman, including those identified by the Committee through its written feedback, such as spouses/civil partners who occupy new build homes and beneficiaries under a trust. The Government considers that the Bill as drafted already achieves this result but has amended the explanatory notes to reflect that.

175. The Government does not believe it is strictly necessary to set out in the Bill that developers are required to establish their own complaints procedures, as setting standards of service is already foreseen in the draft Building Safety Bill. The Scheme itself must include provision for the procedure for making complaints under the scheme and the Government considers that the code of practice would set out expectations that a developer must establish a complaints process and the standards it should meet. However, we have amended the draft Building Safety Bill so that it is clear that the procedures to become and remain a member of the New Homes Ombudsman scheme may include a requirement for a developer to have internal procedures in place for the handling and resolution of complaints and inform purchasers of their rights under the New Homes Ombudsman.

176. We agree with the Committee's recommendation that the Government monitor the performance of the scheme and amend its scope if necessary. The new homes ombudsman provisions include broad scope to make arrangements for there to be a scheme, which includes the provision of information to the Secretary of State and other relevant persons.

177. The Government has also considered additional points raised in written evidence to the Committee and have made amendments to the draft Building Safety Bill. This includes asking the scheme to publish a list of its members so that consumers are clear that a developer is a member of the scheme.

## Annex A: Technical and minor issues

Location in the draft Bill	Select committee observation	Government response
Clause 11(1)	Refers to “the following functions”, with no functions defined (and certainly none “following”). Subsection (3) sets out what the committee’s function will be.	We agree that the drafting of the clause should be adjusted and have instructed Parliamentary Counsel accordingly.
Clause 16(1)	Refers to safety of “persons” in contrast with other clauses such as clause 4(1) which, correctly, refer to “people”.  Similarly:  inserted sections 58Z4 and 58Z5 in clause 44;  clause 47;  clause 86(7); and  Sched 8, para 12(a)	We have instructed Parliamentary Counsel to make the change to clause 16(1) and clause 86(7).  However, clauses 44 and 47 of the draft Building Safety Bill make amendments to the Building Act 1984. This Act makes numerous references throughout to “persons” and we consider it is more in keeping to continue to use “persons” when amending it.  Similarly, schedule 8, paragraph 12(a) inserts a definition which is intended to align with a definition in another existing set of regulations which uses “persons”, the Regulation (EU) No. 305/2011 (regulation laying down harmonised conditions for the marketing of construction products). For the sake of consistency therefore we have continued to refer to “persons” here.
Sched 6, para 31, new section 101A to Building Act 1984	“Appointed person” in new section 101A means something different to Schedule 1. Given that an “appointed person” is going to be such a fundamental role within the building regs, this might give rise to avoidable confusion.	We have instructed Parliamentary Counsel to make amendments to differentiate the roles and avoid any confusion.

Location in the draft Bill	Select committee observation	Government response
Clause 60	<p>The definition of an “occupied” building will not cater for student accommodation.</p> <p>It relies on “dwelling” which is unlikely to encompass such accommodation. In the Building Regulations, they are “rooms for residential purposes”, and not “dwellings”. The Government will therefore likely have to exercise its powers under clause 60 to amend the definition of “occupied” immediately if it is to include student accommodation, as suggested at EN para 228 (where the distinction between dwelling and student accommodation appears to be accepted).</p>	<p>We thank the Committee for highlighting that the definition of an “occupied” building will not cater for student accommodation. We accept that the definition of “occupied” is key to the future expansion of the regime. The current definition of an occupied building will capture offsite student accommodation including student flats, however we agree that the drafting of the clause could be adjusted.</p>
Clause 71	<p>It is unclear by what means the Government intends to allow a building safety manager (BSM) to appeal a decision of the regulator to direct that the BSM be dismissed.</p>	<p>We have removed the direction making power altogether.</p>
Clause 86(7)(b)	<p>“for” is included in error (see the definition of “relevant resident’s item” paragraph (b)).</p>	<p>We agree that this word should be removed.</p>
Clause 88, ENs	<p>Para 661 of the Explanatory Notes suggests the clause implies into long leases a general duty on the lessee to co-operate with the landlord.</p>	<p>We accept that paragraph 661 should be amended to make it clearer that the term to be implied into long leases is that, where the lessee is a resident of the building the lessee will comply with the residents’ duties imposed by clause 86 of the draft Building Safety Bill.</p>

Location in the draft Bill	Select committee observation	Government response
Sched 8, paras 8–10	<p>As drafted, the Government may have no power to issue regulations for “safety-critical products” imposing requirements relating to the risk of disease.</p> <p>The purpose for which the power in paragraph 4 may be exercised in respect of “safety-critical products”, seems to be the risk of product failure causing death or serious injury.</p> <p>If a product is “safety-critical”, it cannot be subject to any of the “general safety requirements” (paras 11–12) which do probably include requirements to assess, avoid or reduce a risk of disease.</p>	<p>We agree that as drafted, the ‘general safety requirement’ cannot be applied to ‘safety critical products’. We are planning to amend the text to allow the general safety requirement to also apply to safety critical products.</p>

Location in the draft Bill	Select committee observation	Government response
Sched 3, para 6	<p>The Building Safety Regulator may disclose to the police any information held “in connection with” any of its building functions. This appears to encompass information obtained, even incidentally, in the execution of a warrant. It is not clear that this is a proportionate and justified interference with the exercise of the occupier’s rights under Art 8 of the European Convention on Human Rights. The Regulator will be the HSE. Information acquired by HSE inspectors under their powers under the Health and Safety at Work Act etc 1974 can be disclosed to the police but only used by the police in connection with health and safety legislation or the safety of the State (s 28(3)(c) and (5)(c)). The draft Bill has no such limitation on the use to which information can be put. Disclosure by the HSE to the police should be subject to consistent control.</p>	<p>The Government considers that there are a significant number of matters that could be relevant to both building safety and the broader criminal law. The Government considers that, where an officer of the regulator becomes aware of serious criminality, that officer should be able (but not be required) to disclose it to the police. However, we appreciate that the committee has raised legitimate concerns about this power being unconstrained. The Government will therefore bring forward an amendment to place appropriate restrictions on the use of information disclosed to the police by the regulator.</p> <p>The Government notes that, in any event, both the Building Safety Regulator and the police are subject to the duty of all public authorities under section 6 of the Human Rights Act 1998 to act in accordance with the Convention rights, including balancing an occupier’s rights under Article 8 with the broader public interest in the prevention of crime.</p>

Location in the draft Bill	Select committee observation	Government response
Sched 8, paras 2–3, ENs paras 92–93	<p>The Explanatory Notes suggest “designated products” in the Bill “covers” construction products “regulated by the EU framework”. That depends on how the Government exercises its power (in para 2 of Sched 8) to designate standards. It seems likely the Government will designate standards under this power to match “designated standards” under Art 18B of the Construction Products Regulation 2011 (Regulation (EU) 305/2011), as amended. There is no automatic incorporation of standards designated under the latter.</p>	<p>Article 18B2 of the 2011 Regulation (as defined in para 18 of Schedule 8) provides all EU harmonised standards existing prior to IP Completion Day, which also have British Standards, become designated standards on IP Completion Day (we understand this covers all current EU harmonised standards). Later EU harmonised standards could be designated using the power in para 2 to Schedule 8, or under Article 18B1 of the 2011 Regulation. The EN can be amended to make this clearer.</p>

## Annex B: Select committee witnesses

Session Date	Witnesses
Monday 14 September, 4pm	Sir Ken Knight, Chair, Independent Expert Advisory Panel Roy Wilsher, Chair, National Fire Chiefs Council
Monday 14 September, 5pm	Graham Watts OBE, Chief Executive, Construction Industry Council Kieran Walker, Technical Director, House Building Federation Adrian Dobson, Executive Director Professional Services, Royal Institute of British Architects
Monday 21 September, 4pm	Dr Debbie Smith OBE, BRE Group Director of Science and Professional Development Peter Caplehorn, CEO, Construction Products Association Dr Scott Steedman, Director of Standards, British Standards Institution
Monday 21 September, 5pm	Lord Porter of Spalding CBE, Fire and Building Safety Spokesperson, Local Government Association Steve Wood, CEO, National House-Building Council Lorna Stimpson, CEO, Local Authority Building Control
Monday 28 September, 4pm	Martin Boyd, Chair, Leasehold Knowledge Partnership Victoria Moffett, Head of Building Safety and Fire Programmes, National Housing Federation
Monday 28 September, 5pm	Nigel Glen, CEO, Association of Residential Managing Agents (ARMA) <b>Rich Silva</b> , Executive Director, Long Harbour <b>James Dalton</b> , Director of General Insurance Policy, Association of British Insurers (ABI)
Monday 5 October, 4:30pm	Sarah Albon, Chief Executive, and Peter Baker, Director of Building Safety and Construction, Health and Safety Executive <b>Dame Judith Hackitt</b>
Monday 19 October 4pm	Lord Greenhalgh, Minister for Building Safety and Communities Chandru Dissanayeke, Director of Building Safety Reform Michael Wade OBE, Expert Adviser, Ministry of Housing, Communities and Local Government









