

Building Safety Bill 2021

NFA briefing and consultation with members

Introduction

[The Building Safety Bill](#) was introduced to Parliament on the 5th July 2021. It has had its first and second readings and is now progressing to committee stage which will start sitting on the 9th September. Although the bill is very long and detailed this is still very much a framework bill with much more detail to come through regulations. The NFA will be monitoring the bill's progress and may make a submission to the committee if there are issues which are still of concern to members. This document seeks to outline the key issues for ALMOs and asks members for their comments, concerns, and questions on the Bill so the NFA can make suitable representations to government during its passage through Parliament.

Timelines

The government has set out a [transition plan](#) in its documents on the bill. The bill is expected to receive Royal Assent within approximately 9-12 months', around April -July 2022. The government has indicated that the first round of provisions will come into force within 6-12 months of the bill receiving Royal Assent (October 2022 – April 2023). The bulk of the new regulatory regime will come into force within 12-18 months of Royal Assent (April 2023 - October 2023). Certain obligations will come into force earlier, such as the Gateway 1 process for construction and major refurbishment of higher-risk buildings (on 1 August 2021).

Members are asked to consider if the outlined transition plan seems reasonable for your organisation within current resources. If not what additional support, time or funding do you require to be able to meet this transition plan, in terms of recruiting building safety managers, preparing the safety case and a resident engagement strategy.

Background

The NFA has been involved in sector wide consultation on this issue with both MHCLG officials and MPs for some time. We have had many meetings with MHCLG, responded to the *Building A Safer Future* consultation in 2019 and made a submission in September 2020 to the committee considering the draft Building Safety Bill. We feel the government has responded to many of the points raised by us and others in our discussions and submissions over the past two years and this bill represents a much more workable piece of proposed legislation.

The Building Safety Bill Summary

Part 1 – Overview

Introduces the bill and gives an overview of the bill itself.

Part 2 – Sets up the new Regulator

The bill establishes the Health and Safety Executive within the Building Safety Regulator. It contains definitions of “building safety risk” and “higher-risk building” and sets out the new process of regulation for the planning and development of higher-risk buildings.

The Regulator already exists in shadow form and will be responsible for developing and implementing the new regulatory regime and establishing and consulting with three advisory committees on building, industry competence and resident representation during the implementation process.

This part of the bill contains the requirements of the new regime with regard to planning and developing new higher-risk buildings. The government is expecting the industry to start preparing for this new regime straight away and so ALMOs are advised to consider these requirements now and let us know if there is anything concerning that we should raise with the committee in terms of the planning or development phase.

There is a separate [consultation on the Building Safety Levy](#) as part of this process. Government proposes excluding affordable housing from the levy charges and is calling for evidence on the potential impacts of this and how such an exclusion could be delivered. Members are asked for their comments on the proposals and if the exclusion proposed is workable on the ground.

Part 3 – Building Act 1984

The bill amends the Building Act 1984 as it applies in relation to England, and separately as it applies in Wales, to provide that the new regulator is the building control authority in relation to higher-risk buildings, and requires the regulator to establish and maintain registers of building control approvers and building inspectors.

Part 4 – Higher-Risk Buildings

This is the key part of the bill for ALMOs as it is about occupied higher risk buildings and imposes duties on Accountable Persons and sets out the use of building safety managers to assist the Accountable Person in fulfilling those duties. There has been a significant change in this part of the bill from the previous draft.

Section 62 defines the meaning of “higher risk building” as “a building in England that is at least 18 metres in height or has at least 7 storeys, and contains at least 2 residential units”. Section 68 sets out the meaning of “**occupied**” “if there are residents of more than one residential unit within the building”. However, “**resident**” is now undefined but maybe defined by regulation later by the Secretary of State.

Accountable Person

Section 69 sets out the definition of the **Accountable Person** as:

*“a person who holds a legal estate in possession in any part of the common parts (subject to subsection (2)), or
a person who does not hold a legal estate in any part of the building but who is under a relevant repairing obligation in relation to any part of the common parts. “*

We believe that this clarifies that where the council own the buildings and the ALMO manages them on their behalf the council will be the Accountable Person, but the ALMO will be the Accountable Person for any homes in scope that it owns itself.

A management body can be the Accountable Person as set out in subsection (2) but only where they have been granted a lease and the lease sets out repair and maintenance obligation on that management body. As far as we understand no ALMO has such a lease with their parent council.

Section 72 - 74 then set out the duties of the Accountable Person in **registering the building with the regulator**, applying for a **building assurance certificate** by showing it has fulfilled all its requirements (i.e. appointed a suitable **Building Safety Manager**, **assessed the building safety risks** and **taken steps to prevent major incident**, developed a **safety case report** and be fulfilling their duties under the **mandatory occurrence reporting system** and providing relevant information to the regulator). They must also have produced a **residents’ engagement strategy**. The certificate should then be displayed in a conspicuous place within the building. Insurance requirements of the accountable persons appear to have been dropped from the bill.

Building Safety Manager

In its response to the pre-legislative committee recommendations the government said it looked again at the role of the Building Safety Manager and has made some changes. In response to 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, the government has decided that all of the duties as set

out in Part 4 of the draft bill now firmly sit with the Accountable Person. The obligations on the Building Safety Manager, and some of the architecture around the Building Safety Regulator's role, have therefore been removed.

There is still a requirement on the Accountable Person to appoint a competent building safety manager to assist them with duties relating to planning, managing and monitoring as they regard as necessary to fulfil their Part 4 obligations. But this role can now be fulfilled within the Accountable Person's organisation if they so wish. We would still expect the ALMO to fulfil that role within our sector as this is where the skills and expertise will lie in terms of building management and resident engagement, but it is clearer that this role is an assisting role and not an accountable role. The explanatory notes state "Whilst the **Building Safety Manager** might be assigned certain duties, accountability will always lie with the **Accountable Person**." The NFA and CWAG will build that into our work on the ALMO/Council relationship due to be published in the autumn.

The bill does not set out the duties of the **Building Safety Manager**, but the [Bill's Explanatory notes](#) say that "The Building Safety Manager's role is to assist the Accountable Person meet its obligations under Part 4 of the bill, comprising the management of safety and overseeing the systems and processes in place for the building's safety. The Principal Accountable Person will set out the functions of the Building Safety Manager in contract." In our sector the management agreement provides the obvious route to make clear the delegations to the ALMO and the ultimate accountability and oversight of the Council.

To help councils and ALMOs put in place the best arrangements the Building Safety Regulator will produce guidance to facilitate the Accountable Person in meeting their responsibilities, with complementary best practice guidance on the support role by the Building Safety Manager. Government is also 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. They expect that the content of the future standard will be aligned with the group's report - *Safer People, Safer Homes: Building Safety Management*. 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.

Please comment on the changes to the bill and whether this changes anything at a local level for you in terms of your preparation for the act with your council.

Section 93 sets out the **complaints procedure** which the **Accountable Person** must establish a system for the investigation of relevant complaints and section 94 outlines the complaints procedure to be established by the regulator.

Residents' Duties

The bill (in section 95) clearly sets out duties on residents and owners in higher risk blocks as well as the powers that the Accountable Person has to ensure their compliance. The Accountable Person can issue a "contravention notice" to specify the alleged contravention, outline the steps required to comply and set out the steps they will take if that notice is not complied with.

The county court can then make an order if necessary, requiring the resident to do or not do a specified thing. Residents can also be required to pay for the repairing or replacing of something which they have damaged.

It does not (as we requested) set out on the face of the bill any explicit expectation that leaseholders of an "in-scope" building would have to supply the freeholder with annual gas and regular electric test certificates in order to show that they are compliant with the regulations, but in the explanatory notes it does go further than before and illustrates a case study which does indicate that expectation:

An owner of a flat in a higher risk building will be responsible for ensuring that the gas boiler in the unit is regularly serviced and kept in good working order. As part of their management of safety risks the appropriate Accountable Person may request information to confirm an annual boiler check by a competent gas engineer. If the resident or owner of the flat refuses to present the information, they have contravened part of their duty and the appropriate Accountable Person could issue a contravention notice and seek an order from the county court requiring the resident or owner of the flat to provide the information. It is expected that court action be undertaken only as a last resort.

The NFA thinks that this is a useful starting point for ALMOs as Building Safety Managers to implement best practice in this regard and have an annual request to leaseholders for an up to date gas safety certificate but we would like to hear your views about how this might work.

Access to premises

Section 97 sets out how an Accountable Person should make a request for access and that they can apply for a county court order if it is refused.

Please comment on whether you think the wording in the both the bill and explanatory notes is helpful on resident duties and access and if anything else is required to assist Accountable Persons and Building Safety Managers carry out their duties in this regard.

Sections 98 – 119 deal with enforcement by the regulator and the special measures they can use to force compliance and sort out problems.

Leaseholder charges

Sections 120 – 122 make the amendments to relevant existing legislation in terms of leaseholders' obligations and duties to pay a new building safety charge. The bill inserts implied terms in leases and amends the 1985 Act to provide new implied covenants in relation to building safety. **These apply to all leases in higher-risk buildings in England.** The landlord covenants with the tenant to comply with building safety duties as an Accountable Person, to co-operate with any Accountable Person and to comply with any order appointing a Special Measures Manager, as may be applicable. The tenant covenants with the landlord to allow access for building safety purposes, to comply with the residents' building safety duties and to comply with the terms of any order appointing a Special Measures Manager.

The clause also implies additional covenants in 'relevant leases' – those which are for a fixed term of 7 years or over under the terms of which tenants have committed to pay a service charge which varies in accordance with the landlord's expenditure on the upkeep of the building. The additional covenants will enable the landlord to pass on the running/management costs of the new regime to the tenant but, instead of being included in the service charge as might otherwise have been the case, this will be through the new mechanism of a 'building safety charge'.

Detailed provisions as to the building safety charge – what costs are to be taken into account, apportionment between tenants, pre-conditions for raising demands, excluded costs, protections for tenants – are set out in a new Schedule 2 of the 1985 Act (Schedule 7 of the Bill) Attached as an appendix to this briefing paper.

Please send any comments on how the proposed new Building Safety Charge will work in practice in a local authority setting and highlight any particular areas of difficulty which need remedying before the passage of the bill.

PART 5: Other provision about safety, standards etc

Section 20 consultation process for remediation works

This part of the bill covers amendments to the existing section 20 consultation process in the Landlord and Tenant Act 1985. It sets out additional steps the landlord must undertake when embarking on defined remediation works.

For specified remediation works, the landlord must take reasonable steps to seek other cost recovery avenues before passing on the costs to leaseholders and inform the leaseholders about what those steps were. The landlord must:

- ascertain whether any grant is payable in respect of the remediation works and if so to obtain the grant;
- ascertain whether all or any of the cost of remediation works may be met by a third party and if so to obtain monies from the third party (which is defined as including monies obtained from insurance, guarantee or indemnity or from the developer or anyone involved in designing or carrying out works on the building); and
- ascertain whether any other prescribed kind of funding is available and to obtain such funding.

Please comment on whether these proposals will cause your authority any problems in relation to remediation and recharging of costs if applicable.

Defective Premises Act

This amends the Defective Premises Act 1972. The Defective Premises Act 1972 creates a right to claim compensation in the civil courts for defective work connected with the provision of a dwelling, where the work renders the dwelling not 'fit for habitation'. The Defective Premises Act does not currently extend to work undertaken on a dwelling beyond its initial 'provision', meaning that work undertaken on existing buildings that has made the dwelling not fit for habitation does not fall within scope of the act, even for highly complex, major works. This clause expands the right to claim compensation to any work undertaken on a dwelling, provided that work is done in the course of a business. It also extends the limitation period in respect of action under both section 1 of the Defective Premises Act 1972 and (the yet to be commenced) section 38 of the Building Act 1984 from the current six years to fifteen years and the limitation period under the new section 2A of the Defective Premises Act 1972 will also be fifteen years.

Establishment of the New Homes Ombudsman scheme

The Bill establishes a separate ombudsman for new homes.

Construction products

It is intended that all construction products which are made available on the UK market should fall under a regulatory regime. The Building Safety Bill does this in two ways, by taking powers to:

- Require construction products to be safe; and
- Create a statutory list of 'safety critical' construction products.

Details will be set out in regulations.

Amendments to the Fire Safety Order

The bill makes a number of amendments to the Fire Safety Order including a requirement for all Responsible Persons to record their fire risk assessment in full as well as a requirement for only "competent" people to assist in the undertaking or reviewing of a fire risk assessment.

It contains amendments to align the Fire Safety Order with the Building Safety Bill and ensure cooperation between Responsible Persons where there is more than one and between successive ones as well as co-operation and co-ordination between Responsible Persons and Accountable Persons in the two different pieces of legislation.

Please comment on whether these proposals make the relevant duties clear enough and align the requirements of the Fire Safety Order and the Building Safety Bill sufficiently to make it work practicably on the ground .

Other

The Bill also includes clauses to change disciplinary procedures and continuing professional development for architects as well as removing the existing requirement for tenants ('the democratic filter') to make their complaint to the Housing Ombudsman via a 'designated person'. It also includes new clauses on the liability of officers of a body corporate so that individuals can be charged as well or instead of the body corporate with a criminal offence in relation to this bill.

Are there any other comments you would like the NFA to feed into the committee stage of the bill?

SCHEDULE 7
BUILDING SAFETY CHARGES
“SCHEDULE 2
BUILDING SAFETY CHARGES

Building safety charges

- (1) A relevant landlord may require a relevant tenant to pay a building safety charge to the landlord in accordance with this Schedule.
- (2) “Building safety charge” means a charge in respect of the building safety costs incurred or to be incurred by or on behalf of—
 - (a) where the relevant landlord is an accountable person for the higher-risk building, the relevant landlord or a special measures manager for the higher-risk building;
 - (b) where the relevant landlord is not such an accountable person, any superior landlord who is an accountable person for the higher-risk building or a special measures manager for the higher-risk building.
- (3) “Building safety costs” are the costs or estimated costs incurred or to be incurred by or on behalf of an accountable person or a special measures manager for a higher-risk building in connection with taking building safety measures.
- (4) “Building safety measures”—
 - (a) are the measures that an accountable person or a special measures manager for a higher-risk building is required or permitted to take in relation to the building under Part 4 of the Building Safety Act 2021, or an order or regulations made under that Part of that Act, but
 - (b) does not include any measure that involves the carrying out of works by such an accountable person or special measures manager (under section 84(2) of that Act or otherwise).
- (5) In this paragraph “costs” includes—
 - (1) legal fees (to the extent not otherwise recoverable);
 - (2) other professional fees;
 - (3) fees payable to the regulator;
 - (4) management costs.
- (6) A building safety charge is in respect of building safety costs whether the costs are incurred, or are to be incurred, in the annual accounting period for which the building safety charge is payable or in an earlier or later period.
- (7) In this Schedule—

“relevant landlord” means a landlord under a lease to which section 30D applies;

“relevant tenant” means a tenant under a lease to which section 30D applies.

Building safety charges: landlord obligations

- (1) Where a relevant landlord requires a relevant tenant to pay a building safety charge, the landlord must—
 - (a) calculate the building safety charge in accordance with paragraph 3;
 - (b) give the tenant a demand in writing specifying the date by which the charge must be paid, which must be at least 28 days after the demand is given;
 - (c) give the tenant a summary of the rights and obligations of relevant tenants in relation to building safety charges;
 - (d) comply with such conditions as may be prescribed.

- (2) The Secretary of State may make regulations about the form and content of the summary of rights and obligations required to be given under sub-paragraph (1)(c).
- (3) Conditions prescribed under sub-paragraph (1)(d) may, in particular, include conditions about—
 - (a) annual accounting periods;
 - (b) the provision of budgets of estimated building safety costs and charges to relevant tenants and the contents of such budgets;
 - (c) the provision of reconciliation accounts to relevant tenants and the contents of such accounts;
 - (d) how any surplus or shortfall of building safety charges received by a relevant landlord is to be treated;
 - (e) the frequency with which relevant tenants may be given demands to pay building safety charges.
- (4) A relevant tenant may withhold payment of a building safety charge if the landlord has not complied with sub-paragraph (1) in relation to the requirement to pay.
- (5) But a relevant tenant may withhold payment of a building safety charge under sub-paragraph (4)—
 - (a) only during the period in which the landlord has not complied with sub-paragraph (1), and
 - (b) only if the tenant—
 - i. gives the landlord a notice in writing setting out the reasons for withholding the payment, and
 - ii. complies with such conditions as may be prescribed.
- (6) Where—
 - (a) a condition prescribed under sub-paragraph (1)(d) requires a relevant landlord to do something on or before a particular date, and
 - (b) the landlord does that thing on a later date,

the landlord is to be treated for the purposes of sub-paragraph (5)(a) as having complied with the condition on that later date.
- (7) Where a relevant tenant withholds payment of a building safety charge in accordance with this paragraph, any provisions of the lease relating to non-payment or late payment of any sums due under the lease do not have effect in relation to the withheld payment for the period during which the tenant is permitted by this paragraph to withhold the payment.

Calculation of building safety charge

- (1) When calculating a building safety charge to be paid by a relevant tenant, a relevant landlord must apportion building safety costs for the higher-risk building to the tenant, for the period in respect of which the charge is to be paid, in accordance with sub-paragraphs (2) to (5).
- (2) Where the lease contains a method for apportioning building safety costs to the tenant, the landlord must apportion the building safety costs to the tenant using that method.
- (3) Where the lease does not contain such a method, the landlord must apportion the building safety costs to the tenant using—
 - (a) any method contained in the lease for apportioning relevant costs to the tenant for the purpose of calculating the service charge payable by the tenant under the lease, or
 - (b) any method agreed in writing with the tenant for apportioning building safety costs to the tenant.
- (4) But where—
 - (a) the landlord or tenant considers that a method used (or proposed to be used) for apportioning building safety costs under sub-paragraph (3)(a) or (b) is not a fair and reasonable method, or

(b) a method for apportioning building safety costs under sub-paragraph (3)(b) is not agreed,

the landlord or tenant may apply to the appropriate tribunal for a determination of a fair and reasonable method for apportioning the building safety costs to the tenant.

(5) Where a method for apportioning the building safety costs to the tenant is determined following an application under sub-paragraph (4), the landlord must apportion the building safety costs using that method.

(6) In this paragraph—

“relevant costs” has the meaning given in section 18;

“service charge” has the meaning given in section 18.

Limitation of building safety charges: relevant building safety measures

- (1) Building safety costs may be taken into account in determining the amount of a building safety charge payable by a relevant tenant only to the extent that such costs are incurred or to be incurred by or on behalf of an accountable person or a special measures manager for a higher-risk building in connection with taking relevant building safety measures.
- (2) The following are relevant building safety measures—
 - (a) applying for registration of a higher-risk building in accordance with section 73 of the Building Safety Act 2021;
 - (b) applying for a building assessment certificate in accordance with section 74 of that Act;
 - (c) displaying a building assessment certificate in accordance with section 77 of that Act;
 - (d) appointing a building safety manager in accordance with section 78 or 79 of that Act;
 - (e) assessing building safety risks in accordance with section 83 of that Act;
 - (f) taking reasonable steps in accordance with section 84 of that Act (management of building safety risks), other than steps involving the carrying out of works as referred to in section 84(2);
 - (g) preparing and revising a safety case report in accordance with section 85 of that Act;
 - (h) notifying the regulator of a safety case report, and giving a copy of a safety case report to the regulator, in accordance with section 86 of that Act;
 - (i) establishing and operating a mandatory occurrence reporting system, and giving information to the regulator, in accordance with section 87 of that Act;
 - (j) keeping information and documents in accordance with section 88 of that Act;
 - (k) giving information and documents to any person in accordance with section 89, 90 or 92 of that Act;
 - (l) preparing, reviewing and revising a residents’ engagement strategy, and providing copies of the strategy to residents, in accordance with section 91 of that Act;
 - (m) establishing and operating a system for the investigation of complaints in accordance with section 93 of that Act;
 - (n) giving a contravention notice to a resident, and making an application to the county court, in accordance with section 96 of that Act;
 - (o) making a request to enter premises, or making an application to the county court, in accordance with section 97 of that Act (access to premises).
- (3) The Secretary of State may by regulations amend sub-paragraph (2) to add, remove or modify a building safety measure.

Limitation of building safety charges: reasonableness

Building safety costs may be taken into account in determining the amount of a building safety charge payable by a relevant tenant—

- (a) only to the extent that they are reasonably incurred, and
- (b) where they are incurred on the provision of services, only if the services are of a reasonable standard,

and the amount payable is to be limited accordingly.

Limitation of building safety charges: consultation requirements

- (1) Where this paragraph applies to any qualifying building safety agreement, the relevant contributions of relevant tenants are limited in accordance with sub-paragraph (5) or (6) (or both) unless—
 - (a) the consultation requirements have been either—
 - i. complied with in relation to the agreement, or
 - ii. dispensed with in relation to the agreement by (or on appeal from) the appropriate tribunal (see paragraph 7), or
 - (b) the agreement is entered into, by a special measures manager in accordance with a special measures order).
- (2) In this paragraph “relevant contribution”, in relation to a relevant tenant and any agreement, is the amount which the tenant may be required to contribute by the payment of building safety charges to building safety costs incurred under the agreement.
- (3) The Secretary of State may by regulations provide that this paragraph applies to a qualifying building safety agreement—
 - (a) if building safety costs incurred under the agreement exceed an appropriate amount, or
 - (b) if building safety costs incurred under the agreement during a period specified by the regulations exceed an appropriate amount.
- (4) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount specified by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more relevant tenants being an amount specified by, or determined in accordance with, the regulations.
- (5) Where an appropriate amount is set by virtue of sub-paragraph (4)(a), the amount of the building safety costs incurred under the agreement which may be taken into account in determining the relevant contributions of relevant tenants is limited to the appropriate amount.
- (6) Where an appropriate amount is set by virtue of sub-paragraph (4)(b), the amount of the relevant contribution of the relevant tenant, or each of the relevant tenants, whose relevant contribution would otherwise exceed the amount specified by, or determined in accordance with, the regulations is limited to the amount so specified or determined.

Consultation requirements: supplementary

- (1) Where a relevant person applies to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying building safety agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
- (2) In this Schedule “qualifying building safety agreement” means an agreement of a prescribed description entered into, by or on behalf of a relevant person, in relation to a higher-risk building.
- (3) In paragraph 6 and this paragraph “the consultation requirements” means such requirements as may be prescribed.
- (4) Requirements prescribed under sub-paragraph (3) may in particular include provision requiring the landlord or a relevant person—
 - (a) to provide details of proposed agreements to relevant tenants or the recognised tenants’ association representing them,

- (b) to obtain estimates for proposed agreements,
- (c) to invite relevant tenants or the recognised tenants' association to propose the names of persons from whom the landlord or a relevant person should try to obtain other estimates,
- (d) to have regard to observations made by relevant tenants or the recognised tenants' association in relation to proposed agreements and estimates, and
- (e) to give reasons in specified circumstances for entering into agreements.

Limitation of building safety charges: excluded costs

- (1) Building safety costs may not be taken into account in determining the amount of a building safety charge payable by a relevant tenant to the extent that such building safety costs are—
 - (a) costs incurred or to be incurred by or on behalf of a relevant person solely as a result of any penalty imposed or enforcement action taken by the regulator;
 - (b) legal costs incurred or to be incurred by or on behalf of a relevant person in connection with special measures order proceedings;
 - (c) costs incurred or to be incurred by or on behalf of a relevant person by reason of any negligence, breach of contract or unlawful act on the part of that relevant person or a person acting on behalf of that relevant person;
 - (d) prescribed costs incurred or to be incurred by or on behalf of a relevant person in connection with the taking of relevant building safety measures.
- (2) In this paragraph— “enforcement action” means action taken with a view to, or in connection with—
 - (a) securing compliance with Part 4 of the Building Safety Act 2021 or regulations made under that Part, or
 - (b) the imposition of a sanction in respect of a contravention of that Part or those regulations;

“special measures order proceedings” means any proceedings relating to the making, variation or discharge of, or the giving of directions in relation to, a special measures order under Part 4 of the Building Safety Act 2021 (including any appeals in relation to such proceedings).

Limitation of building safety charges: time limit on making demands

- (1) If any of the building safety costs taken into account in determining the amount of any building safety charge were incurred more than 18 months before a demand for payment of the building safety charge (“demand A”) is served on a relevant tenant by a relevant landlord, then the tenant is not liable to pay so much of the building safety charge as reflects the costs so incurred.
- (2) But sub-paragraph (1) does not apply if—
 - (a) within the period of 18 months beginning with the date when the building safety costs in question were incurred, the relevant tenant was notified in writing that those costs had been incurred and that the tenant would subsequently be required to contribute to them by the payment of a building safety charge, or
 - (b) the relevant landlord had previously received a demand for payment of a building safety charge (“demand B”) from a superior landlord in respect of the same building safety costs (in which case sub-paragraph (3) applies).
- (3) If demand A is served on the relevant tenant more than 18 months after demand B is served on the relevant landlord, then the relevant tenant is not liable to pay so much of the building safety charge as reflects the building safety costs.
- (4) But sub-paragraph (3) does not apply if, within the period of 18 months beginning with the date when demand B was served on the relevant landlord, the relevant tenant was notified in writing that

demand B had been received and that the tenant would subsequently be required to pay a building safety charge in respect of the building safety costs.

Limitation of building safety charges: costs of proceedings

- (1) A relevant tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by a relevant person in connection with proceedings before a court, the First-tier Tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as building safety costs to be taken into account in determining the amount of any building safety charge payable by the tenant or any other person or persons specified in the application.
- (2) Section 20C(2) applies to an application under sub-paragraph (1) as it applies to an application under section 20C(1).
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Request for summary of building safety costs

- (1) A relevant tenant may, by written request, require a relevant person to supply them with a written summary of the relevant building safety costs incurred—
 - (a) if the relevant accounts are made up for periods of twelve months, in the last such period ending not later than the date of the request, or
 - (b) if the accounts are not so made up, in the period of twelve months ending with the date of the request.
- (2) In sub-paragraph (1) “relevant building safety costs” means building safety costs in respect of which building safety charges were payable or demanded as payable in that or any other period.
- (3) If the tenant is represented by a recognised tenants’ association and the tenant consents, the request may be made by the secretary of the association instead of by the tenant and may then be for the supply of the summary to the secretary.
- (4) A request served on the building safety manager for a higher-risk building is to be treated as having been served on the relevant person, and where a building safety manager is served with such a request they must forward it as soon as is reasonably practicable to the relevant person.
- (5) The relevant person must comply with the request within one month of the request or within six months of the end of the period referred to in sub-paragraph (1)(a) or (b), whichever is the later.
- (6) The summary must—
 - (a) set out the costs in a way showing how they have been or will be reflected in demands for building safety charges;
 - (b) summarise the items specified in sub-paragraph (7);
 - (c) specify the aggregate of any amounts received by the relevant person during the period referred to in sub-paragraph (1)(a) or (b) on account of building safety charges in respect of relevant premises and still standing to the credit of the relevant tenants of those premises at the end of that period.
- (7) The items to be summarised are—
 - (a) any of the costs in respect of which no demand for payment was received by the relevant person within the period referred to in sub-paragraph (1)(a) or (b);
 - (b) any of the costs in respect of which—
 - i. a demand for payment was so received, but
 - ii. no payment was made by the relevant person within that period;
 - (c) any of the costs in respect of which—
 - i. a demand for payment was so received, and

- ii. payment was made by the relevant person within that period.
- (8) In sub-paragraph (6) “relevant premises” means premises whose relevant tenant is either—
 - (a) the person by or with the consent of whom the request was made, or
 - (b) a person whose obligations under the terms of their lease as regards contributing to building safety costs relate to the same costs as the corresponding obligations of the person mentioned in paragraph (a) relate to.
- (9) If the building safety charges in relation to which the costs are building safety costs as mentioned in sub-paragraph (1) are payable by the relevant tenants of more than four premises, the summary must be certified by a qualified accountant as—
 - (a) in the accountant’s opinion a fair summary complying with the requirements of sub-paragraph (6), and
 - (b) being sufficiently supported by accounts, receipts and other documents which have been produced to the accountant.
- (10) Section 28 applies in relation to the reference to a “qualified accountant” in sub-paragraph (9) as it applies in relation to the reference to a “qualified accountant” in section 21(6).

Request to inspect supporting accounts etc

- (1) This paragraph applies where a relevant tenant, or the secretary of a recognised tenants’ association, has obtained a summary of building safety costs as referred to in paragraph 11(1) (summary of relevant costs), whether in accordance with that paragraph or otherwise.
- (2) The tenant, or the secretary with the consent of the tenant, may by written request within six months of obtaining the summary require the relevant person to provide the tenant, or the secretary, with reasonable facilities—
 - (a) for inspecting the accounts, receipts and other documents supporting the summary, and
 - (b) for taking copies or extracts from them.
- (3) A request served on the building safety manager for a higher-risk building is to be treated as having been served on the relevant person, and where a building safety manager is served with such a request they must forward it as soon as is reasonably practicable to the relevant person.
- (4) The relevant person must make such facilities available to the tenant or secretary for a period of two months beginning not later than one month after the request is made.
- (5) The relevant person must—
 - (a) where such facilities are for the inspection of any documents, make them so available free of charge;
 - (b) where such facilities are for the taking of copies or extracts, be entitled to make them so available on payment of such reasonable charge as the landlord may determine.

Failure to comply with request made under paragraphs 11 and 12

- (1) This paragraph applies where—
 - (a) a relevant tenant (or the secretary of a recognised tenants’ association) makes a request to a relevant person under paragraph 11 or 12, and
 - (b) the relevant person does not comply with the request in accordance with the relevant paragraph.
- (2) The relevant tenant (or the secretary) may, subject to sub-paragraph (3), apply to the appropriate tribunal for an order requiring the relevant person to comply with the request.
- (3) Before making an application under sub-paragraph (2), the relevant tenant (or the secretary) must—
 - (a) give the relevant person at least 14 days notice in writing of their intention to make an application, and

- (b) give a copy of such notice to the regulator and, if the relevant person is not the relevant tenant's landlord, the relevant tenant's landlord.

Liability to pay building safety charges: jurisdiction

- (1) An application may be made to the appropriate tribunal for a determination whether a building safety charge is payable and, if it is, as to—
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for relevant building safety measures, a building safety charge would be payable for the costs and, if it would, as to—
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (5) An agreement by the relevant tenant (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,

of any question which may be the subject of an application under sub-paragraph (1) or (3).
- (6) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this paragraph is in addition to any jurisdiction of a court in respect of the matter.

Building safety charge contributions to be held on trust

- (1) This paragraph applies where relevant tenants of a higher-risk building are required to pay building safety charges to a relevant landlord.
- (2) Any sums paid to the landlord by way of building safety charges, and any investments representing those sums, are (together with any income accruing thereon) to be held by the landlord either—
 - (a) as a single trust fund, or
 - (b) in two or more separate trust funds.
- (3) The landlord must hold any trust fund—
 - (a) on trust to defray costs incurred in connection with the matters for which the building safety charges were payable, and
 - (b) subject to that, on trust for the contributing tenants for the time being.
- (4) Subject to sub-paragraphs (5) to (7), the contributing tenants are to be treated as entitled by virtue of sub-paragraph (3)(b) to such shares in the residue of any such fund as are proportionate to their respective liabilities to pay building safety charges.
- (5) On the termination of the lease of any of the contributing tenants, the tenant is not entitled to any part of any trust fund, and (except where sub-paragraph (6) applies) such fund which is attributable

to building safety charges paid is accordingly to continue to be held on the trusts referred to in sub-paragraph (3).

- (6) On the termination of the lease of the last of the contributing tenants, any trust fund is to be dissolved as at the date of the termination of the lease, and any assets comprised in the fund immediately before its dissolution are to be retained by the landlord for their own use and benefit.
- (7) Sub-paragraphs (4) to (6) have effect in relation to any of the contributing tenants subject to any express terms of the tenant's lease (whenever it was granted) which relate to the distribution, either before or after the termination of the lease, of amounts attributable to building safety charges paid.
- (8) Subject to sub-paragraph (7), the provisions of this paragraph prevail over the terms of any express or implied trust created by a lease so far as inconsistent with those provisions.
- (9) If the Secretary of State by regulations so provides, any sums standing to the credit of any trust fund may, instead of being invested in any other manner authorised by law, be invested in such manner as may be specified in the regulations.
- (10) In this paragraph "contributing tenants" means the tenants referred to in sub-paragraph (1).

Regulations

- (1) In this paragraph "regulations" means regulations under any provision of this Schedule.
- (2) A power to make regulations includes power to make—
 - (a) consequential, supplementary, incidental, transitional, transitory or saving provision;
 - (b) provision generally or only in relation to specific cases;
 - (c) different provision for different purposes.
- (3) Regulations are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under paragraph 4(3) (relevant building safety measures) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (5) Any other statutory instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

Interpretation

In this Schedule—

- "building safety charge" has the meaning given in paragraph 1;
- "building safety costs" has the meaning given in paragraph 1;
- "building safety measure" has the meaning given in paragraph 1 and
 - "relevant building safety measure" means a building safety measure listed in paragraph 4(2);
- "landlord" has the meaning given in section 30D;
- "prescribed" means prescribed in regulations made by the Secretary of State;
- "qualifying building safety agreement" has the meaning given in paragraph 7;
- "recognised tenants' association" has the meaning given in section 29;
- "the regulator" has the meaning given in section 123 of the Building Safety Act 2021;
- "relevant landlord" has the meaning given in paragraph 1;
- "relevant person" means an accountable person or special measures manager for a higher-risk building;
- "relevant tenant" has the meaning given in paragraph 1;
- "tenant" has the meaning given in section 30D."